TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 210.

CAGO, BURLINGTON & QUINCY RAILROAD COMPANY,
APPELLANT,

vs.

E. OSBORNE, AS TAX COMMISSIONER OF THE STATE OF NEBRASKA; GILBERT E. HAASE, AS COUNTY TREASURER, BUFFALO COUNTY, NEBRASKA; FRED E. ERICSON, AS COUNTY TREASURER, BURT COUNTY, NEBRASKA, ET AL.

AL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED FEBRUARY 14, 1923.

(29,402)

(29,402)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 219.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, APPELLANT,

vs.

W. H. OSBORNE, AS TAX COMMISSIONER OF THE STATE OF NEBRASKA; GILBERT E. HAASE, AS COUNTY TREASURER, BUFFALO COUNTY, NEBRASKA; FRED E. ERICSON, AS COUNTY TREASURER, BURT COUNTY, NEBRASKA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 19, 1923.

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1-3 IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA, LINCOLN DIVISION.

TRANSCRIPT OF THE RECORD ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

In the Matter of

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, Appellant,

vs.

W. H. OSBORNE, JR., as State Tax Commissioner of the State of Nebraska; H. C. Haverly, as County Treasurer, Adams County, Nebraska; G. E. Thornton, as County Treasurer, Antelope County, Nebraska; George C. Waters, as County Treasurer, Blaine County, Nebraska; F. W. Irish, as County Treasurer, Box Butte County, Nebraska; G. E. Haase, as County Treasurer, Buffalo County, Nebraska; Fred E. Ericson, as County Treasurer, Burt County, Nebraska; P. A. Tomek, as County Treasurer, Butler County, Nebraska; Mike Tritsch, as County Treasurer, Cass County, Nebraska; F. O. Robinson, as County Treasurer, Cedar County, Nebraska; Mrs. A. B. Grant, as County Treasurer, Chase County, Nebraska; M. Lancaster, as County Treasurer, Cheyenne County, Nebraska; H. J. Platz, as County Treasurer, Clay County, Nebraska; Joe Sedlacek, as County Treasurer, Colfax County, Nebraska; W. L. McCandless, as County Treasurer, Custer County, Nebraska; Walter E. Miller, as County Treasurer, Dakota County, Nebraska; Fred A. Neeland, as County Treasurer, Dawes County, Nebraska; Irene Lamna, as County Treasurer, Dawson County, Nebraska; O. A. Butler, as County Treasurer, Dixon County, Nebraska; Joseph Roberts, as County Treasurer, Dodge County, Nebraska; M. L. Endres, as County Treasurer, Douglas County, Nebraska; F. K. Fisk, as County Treasurer, Dundy County, Nebraska; Lester S. Donisthorpe, as County Treasurer, Fillmore County, Nebraska; Emil Nelson, as County Treasurer, Franklin County, Nebraska; George Wagner, as County Treasurer, Frontier County, Nebraska; J. H. Scott, as County Treasurer, Furnas County, Nebraska; J. A. Barnard, as County Treasurer, Gage County, Nebraska; F. M. Smith, as County Treasurer, Garfield County, Nebraska; J. H. Furrow, as County Treasurer, Gosper County, Nebraska; C. O. Jones, as County Treasurer, Grant County, Nebraska; J. L. Fitzpatrick, as County Treasurer, Greeley County, Nebraska; Gus E. Neumann, as County Treasurer, Hall County, Nebraska; T. E. Toof, as County Treasurer, Hamilton County, Nebraska; J. K. Richmond, as County Treasurer, Harlan County, Nebraska; Joseph M. Crosby, as County Treas-

urer, Hayes County, Nebraska; Robert R. Knowles, as
4 County Treasurer, Hitchcock County, Nebraska; R. E. Gallagher, as County Treasurer, Holt County, Nebraska; George F. Gruenig, as County Treasurer, Hooker County, Nebraska; John A. Frandsen, as County Treasurer, Howard County, Nebraska; E. L. Jenkins, as County Treasurer, Jefferson County, Nebraska; J. A. Lawrence, as County Treasurer, Johnson County, Nebraska; J. H. Jensen, as County Treasurer, Kearney County, Nebraska; William Albert, as County Treasurer, Lancaster County, Nebraska; S. M. Souder, as County Treasurer, Lincoln County, Nebraska; Emil Hansen, as County Treasurer, Merrick County, Nebraska; Mabel J. Thompson, as County Treasurer, Morrill County, Nebraska; Earl Conner, as County Treasurer, Nemaha County, Nebraska; Belle Galley, as County Treasurer, Nuckolls County, Nebraska; F. R. Ross, as County Treasurer, Otoe County, Nebraska; M. L. Flanagin, as County Treasurer, Pawnee County, Nebraska; Mary J. Ford, as County Treasurer, Perkins County, Nebraska; Carl E. Peterson, as County Treasurer, Phelps County, Nebraska; C. F. Story, as County Treasurer, Pierce County, Nebraska; A. J. Krzycki, as County Treasurer, Platte County, Nebraska; J. W. Fillman, as County Treasurer, Polk County, Nebraska; J. W. Nutt, as County Treasurer, Red Willow County, Nebraska; O. O. Marsh, as County Treasurer, Richardson County, Nebraska; O. J. Kubicek, as County Treasurer, Saline County, Nebraska; J. P. Spearman, as County Treasurer, Sarpy County, Nebraska; George F. Bartek, as County Treasurer, Saunders County, Nebraska; A. R. Downar, as County Treasurer, Scotts Bluff County, Nebraska; Agnes J. Pence, as County Treasurer, Seward County, Nebraska; Bruce H. Hewett, as County Treasurer, Sheridan County, Nebraska; F. A. Grow, as County Treasurer, Sherman County, Nebraska; Fred W. Meyer, as County Treasurer, Sioux County, Nebraska; Elmo B. Roper, as County Treasurer, Thayer County, Nebraska; Nick J. Wirz, as County Treasurer, Thomas County, Nebraska; Guy G. Griffin, as County Treasurer, Thurston County, Nebraska; Lafe Paist, as County Treasurer, Valley County, Nebraska; R. G. Allen, as County Treasurer, Washington County, Nebraska; Frank Starr, as County Treasurer, Webster County, Nebraska; C. J. Brown, as County Treasurer, Wheeler County, Nebraska; F. L. Propst, as County Treasurer, York County, Nebraska.

Substituted Parties Defendant, as follows:

5 Pearl Woodworth, as County Treasurer, Adams County, Nebraska; David Fletcher, as County Treasurer, Antelope County, Nebraska; Elmer N. Demaray, as County Treasurer, Blaine County, Nebraska; Cora M. Lewis, as County Treasurer, Box Butte County, Nebraska; William D. Miller, as County Treasurer, Butler County, Nebraska; Mia Gering, as County Treasurer, Cass County, Nebraska; Martin Nelson, as County Treasurer, Cedar County, Nebraska; James M. Nelson, as County Treasurer, Cheyenne County,

Nebraska; Edward L. Cleveland, as County Treasurer, Custer County, Nebraska; Belle Quinn, as County Treasurer, Dawes County, Nebraska; Otto J. Bauman, as County Treasurer, Douglas County, Nebraska; Clay Thomas, as County Treasurer, Fillmore County, Nebraska; George A. Carter, as County Treasurer, Franklin County, Nebraska; Martin E. Chambers, as County Treasurer, Gosper County, Nebraska; John Haney, as County Treasurer, Grant County, Nebraska; Hugo H. Meves, as County Treasurer, Hall County, Nebraska; Jessie Middagh, as County Treasurer, Harlan County, Nebraska; Thomas J. Bichall, as County Treasurer, Hayes County, Nebraska; William E. Conklin, as County Treasurer, Holt County, Nebraska; John Kudrna, as County Treasurer, Hooker County, Nebraska; Albert E. Sutherland, as County Treasurer, Lancaster County, Nebraska; Hazel T. Scoggin, as County Treasurer, Morrill County, Nebraska; Harry R. Young, as County Treasurer, Nemaha County, Nebraska; David G. McAllister, as County Treasurer, Otoe County, Nebraska; Alfred L. Brande, as County Treasurer, Pierce County, Nebraska; William L. Boettcher, as County Treasurer, Platte County, Nebraska; Naomi T. Wootton, as County Treasurer, Red Willow County, Nebraska; Fred Brecht, as County Treasurer, Richardson County, Nebraska; Vance Jelinek, as County Treasurer, Saline County, Nebraska; D. S. Fase, as County Treasurer, Sarpy County, Nebraska; Peter B. Schmidt, as County Treasurer, Scotts Bluff County, Nebraska; Clarence S. Marcy, as County Treasurer, Sheridan County, Nebraska; Edward B. Lyon, as County Treasurer, Sioux County, Nebraska; Francis Cedarholm, as County Treasurer, Thayer County, Nebraska; Chas. E. West, as County Treasurer, Thomas County, Nebraska; Nettie Baker as County Treasurer, Thurston County, Nebraska; Mrs. Hazel Powell, as County Treasurer, Webster County, Nebraska, T. Edward Wyman, as County Treasurer, Wheeler County, Nebraska, Appellees.

Pleas before Honorable Robert E. Lewis, Circuit Judge; Honorable Thomas C. Munger, District Judge, and Honorable J. W. Woodrough, District Judge, sitting in the District of Nebraska, at the October term of Lincoln Division of said District of Nebraska, begun October 2, 1922.

Appearances:

For appellant: Byron Clark, Esq., 10th & Farnam Sts., Omaha, Nebr. Jesse L. Root, Esq., 10th & Farnam Sts., Omaha, Nebr. J. Weingarten, Esq., 10th & Farnam Sts., Omaha, Nebr. Bruce Scott, 547 West Jackson Blvd., Chicago, Ill., of Counsel.

For appellees: O. S. Spillman, Attorney General, Capitol, Lincoln, Nebr. Hugh Lamaster, Ass't Attorney General, Capitol, Lincoln, Nebr.

Be it remembered, That at a District Court of the United States for the District of Nebraska, at the October 1922 Term at Lincoln Division thereof, begun on the 2d day of October, 1922, before Honorable Robert E. Lewis, Circuit Judge, Honorable Thomas

C. Munger, District Judge, and Honorable J. W. Woodrough, District Judge, sitting within the said District of Nebraska, proceedings were had and done on the respective days hereinafter mentioned, in the matter of Chicago, Burlington and Quincy Railroad Company versus W. H. Osborne, Jr., as Tax Commissioner of the State of Nebraska, and others, that is to say:

8 In United States District Court.

PETITION IN EQUITY.

[Filed November 22, 1922.]

And as Amended by Interlineation Pursuant to Leave Granted Prior to Hearing on the Application for Interlocutory Injunction.

To the Honorable the Judge of the District Court of the United States in and for the District of Nebraska:

Comes now the plaintiff, and for cause of action alleges:

I.

Plaintiff is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, having its principal office and place of business in the City of Chicago, in Cook County, in said state, and is and was during all the times hereinafter referred to a citizen and a resident of the State of Illinois, and a non-resident of the State of Nebraska. Plaintiff was organized for the purpose of transacting the business of a common carrier of passengers and freight by rail in the States of Illinois, Iowa, Nebraska and other states, and that it owns and operates as such carrier lines of railroad in the States of Illinois, Iowa, Wisconsin, Minnesota, Missouri, Kansas, Nebraska, Colorado, South Dakota, Wyoming and Montana, and in all these states is and during all the times in the petition referred to was engaged in interstate commerce.

II.

That the defendant, W. H. Osborne, Jr., is the duly appointed, qualified and acting Tax Commissioner of the State of Ne-
9 braska, and is a citizen and resident of said State, and is and has been such citizen and resident of said State during all of the time hereinafter complained of; that H. C. Haverly is the duly elected, qualified and acting County Treasurer of the County of Adams, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State of Nebraska; that G. E. Thornton is the duly elected, qualified and acting County Treasurer of the County of Antelope, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State of Nebraska; that George C. Waters is the duly elected, qualified and acting

County Treasurer of the County of Blaine, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that F. W. Irish is the duly elected, qualified and acting County Treasurer of the County of Box Butte, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that G. E. Haase is the duly elected, qualified and acting County Treasurer of the County of Buffalo, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Fred E. Ericson is the duly elected, qualified and acting County Treasurer of the County of Burt, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that P. A. Tomek is the duly elected, qualified and acting County Treasurer of the County of Butler, Nebraska, and is and has been during all of the year A. D. 1922, a citizen and resident of said State; that Mike Tritsch is the duly elected, qualified and acting County Treasurer of the County of Cass, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that F. O. Robinson is the duly elected, qualified and acting County Treasurer of the County of Cedar, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Mrs. A. B. Grant is the duly elected, qualified and acting County Treasurer of the County of Chase, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that M. Lancaster is the duly elected, qualified and acting County Treasurer of the County of Cheyenne, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that H. J. Platz is the duly elected, qualified and acting County Treasurer of the County of Clay, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Joe Sedlacek is the duly elected, qualified and acting County Treasurer of the County of Colfax, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that W. L. McCandless is the duly elected, qualified and acting County Treasurer of the County of Custer, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Walter E. Miller is the duly elected, qualified and acting County Treasurer of the County of Dakota, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Fred A. Neeland is the duly elected, qualified and acting County Treasurer of the County of Dawes, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Irene Lamma is the duly elected, qualified and acting County Treasurer of the County of Dawson, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State, that O. A. Butler is the duly elected, qualified and acting County Treasurer of the County of Dixon, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Joseph Roberts is the duly elected, qualified and acting County Treasurer of the County of Dodge, Nebraska, and is and has been during all of the year A. D.

1922 a citizen and resident of said State; that M. L. Endres
12 is the duly elected, qualified and acting County Treasurer of the County of Douglas, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that F. K. Fisk is the duly elected, qualified and acting County Treasurer of the County of Dundy, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Lester S. Donisthorpe is the duly elected, qualified and acting County Treasurer of the County of Fillmore, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Emil Nelson is the duly elected, qualified and acting County Treasurer of the County of Franklin, Nebraska and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that George Wagner is the duly elected, qualified and acting County Treasurer of the County of Frontier, Nebraska, and is and has been during all of the year A. D. — a citizen and resident of said State; that J. H. Scott is the duly elected, qualified and acting County Treasurer of the County of Furnas, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that J. A. Barnard is the duly elected, qualified and acting County Treasurer of the County of Gage, Nebraska, and is and
13 has been during all of the year A. D. 1922 a citizen and resident of said State; that F. M. Smith is the duly elected, qualified and acting County Treasurer of the County of Garfield, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that J. H. Furrow is the duly elected, qualified and acting County Treasurer of the County of Gosper, Nebraska and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that C. O. Jones is the duly elected, qualified and acting County Treasurer of the County of Grant, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that J. L. Fitzpatrick is the duly elected, qualified and acting County Treasurer of the County of Greeley, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Gus E. Neumann is the duly elected, qualified and acting County Treasurer of the County of Hall, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that H. E. Toof is the duly elected, qualified and acting County Treasurer of the County of Hamilton, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that J. K. Richmond is the duly elected, qualified and acting County Treas-
14 urer of the County of Harlan, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Joseph M. Crosby is the duly elected, qualified and acting County Treasurer of the County of Hayes, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Robert R. Knowles is the duly elected, qualified and acting County Treasurer of the County of Hitchcock, Nebraska, and is and has been during all of the year A. D. 1922 a resident and citizen of said State; that R. E. Gallagher is the duly elected, quali-

fied and acting County Treasurer of the County of Holt, Nebraska, and is and has been during all of the year A. D. 1922, a citizen and resident of said State; that George F. Gruenig is the duly elected, qualified and acting County Treasurer of the County of Hooker, Nebraska, and is and has been during all of the year A. D. 1922, a citizen and resident of said State; that John A. Frandsen is the duly elected, qualified and acting County Treasurer of the County of Howard, Nebraska and is and has been during all of the year A. D. 1922, a resident and citizen of said State; that E. L. Jenkins is the duly elected, qualified, and acting County Treasurer of the County of Jefferson, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of the said State; that J. A. Lawrence is the duly elected, qualified and acting County Treasurer of the County of Johnson, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that J. H. Jensen is the duly elected, qualified and acting County Treasurer of the County of Kearney, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that William Albers is the duly elected, qualified and acting County Treasurer of the County of Lancaster, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that S. M. Souder is the duly elected, qualified and acting County Treasurer of the County of Lincoln, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Emil Hansen is the duly elected, qualified and acting County Treasurer of the County of Merrick, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Mabel J. Thompson is the duly elected, qualified and acting County Treasurer of the County of Morrill, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Ear Conner is the duly elected, qualified and acting County Treasurer of the County of Nemaha, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Belle Galley is the duly elected, qualified and acting County Treasurer of the County of Nuckolls, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that F. R. Roos is the duly elected, qualified and acting County Treasurer of the County of Otoe, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that M. L. Flanagin is the duly elected, qualified and acting County Treasurer of the County of Pawnee, Nebraska, and is and has been during all of the year A. D. 1922, a citizen and resident of said State; that Mary J. Ford is the duly elected, qualified and acting County Treasurer of the County of Perkins, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Carl E. Peterson is the duly elected, qualified and acting County Treasurer of the County of Phelps, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that C. F. Story is the duly elected qualified and acting County Treasurer of the County of Pierce, Nebraska, and is and has

been during all of the year A. D. 1922, a citizen and resident of said State; that A. J. Krzyeki is the duly elected, qualified and acting County Treasurer of the County of Platte, Nebraska, and is and has been during all of the year A. D. 1922, a citizen and resident of said State; that J. W. Fillman is the duly elected, qualified
17 and acting County Treasurer of the County of Polk, Nebraska, and is and has been during all of the year A. D. 1922, a citizen and resident of said State; that J. W. Nutt is the duly elected, qualified and acting County Treasurer of the County of Red Willow, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that O. O. Marsh is the duly elected, qualified and acting County Treasurer of the County of Richardson, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that O. J. Kubicek is the duly elected, qualified and acting County Treasurer of the County of Saline, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that J. P. Spearman is the duly elected, qualified and acting County Treasurer of the County of Sapry, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that George F. Bartek is the duly elected, qualified and acting County Treasurer of the County of Saunders, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that A. R. Downar is the duly elected, qualified and acting County Treasurer of the County of Scotts Bluff, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Agnes J. Pence is the duly elected, qualified and
18 acting County Treasurer of the County of Seward, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Bruce H. Hewett is the duly elected, qualified and acting County Treasurer of the County of Sheridan, Nebraska, and is and has been during all of the said year A. D. 1922 a citizen and resident of said State; that F. A. Grow is the duly elected, qualified and acting County Treasurer of the County of Sherman, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Fred W. Meyer is the duly elected, qualified and acting County Treasurer of the County of Sioux, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Elmo B. Roper is the duly elected, qualified and acting County Treasurer of the County of Thayer, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Nick J. Wirz is the duly elected, qualified and acting County Treasurer of the County of Thomas, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Guy G. Griffin is the duly elected, qualified and acting County Treasurer of the County of Thurston, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Lafe Paist is the duly elected qualified and acting County
19 Treasurer of the County of Valley, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of

said State; that R. G. Allen is the duly elected, qualified and acting County Treasurer of the County of Washington, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Frank Starr is the duly elected, qualified and acting County Treasurer of the County of Webster, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that C. J. Brown is the duly elected, qualified and acting County Treasurer of the County of Wheeler, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that F. L. Propst is the duly elected, qualified and acting County Treasurer of the County of York, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that

III.

That this is a suit of civil nature in equity involving an amount against each defendant jointly and severally, exclusive of interest and costs exceeding the sum or value of Three Thousand and no/100 Dollars ($3,000.00), and is a controversy wholly between the plaintiff, a citizen and resident of the State of Illinois, and the defendants, each and all of whom are citizens and residents of the State of Nebraska,

IV.

That the claims and causes of actions involved in this suit arise under and involve the construction and application of the Fifth and Fourteenth Amendments to the Constitution of the United States, providing, amongst other things, that no person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation and that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, and plaintiff claims protection of said Amendments to the Constitution of the United States, against the unlawful acts of the defendants hereinafter set forth.

V.

Plaintiff further alleges that this is a suit in equity to enjoin the collection of illegal taxes levied against plaintiff and its property; these taxes are illegal because the property of plaintiff has been valued for taxing purposes at more than its true value, while the property of all other tax payers in the state and particularly real estate, has been systematically, intentionally and continuously valued at but a fraction of its true value, thereby resulting in a discrimination against the plaintiff, and depriving it of the equal protection of the law, in violation of sections 1 and 4 of Article VIII of the Constitution of the State of Nebraska, and the statutes of said

state, and in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, and of the Third Subdivision of section four of the Enabling Act of Congress passed April 19, 1864, by the Congress of the United States, to enable the people of Nebraska to form a constitution and state government, and for the admission of said state into the Union on an equal footing with the original states.

VI.

Plaintiff further alleges that on the 19th day of April, 1864, the Congress of the United States passed an act to enable the people of Nebraska to form a constitution and state government and for the admission of such state into the Union on an equal footing with the original states. (p. 47 Vol. 13 U. S. Sta. at Large.) (Compiled Statutes, 1922, Page 29.) In the Third Subdivision of Section Four of this Act it was provided, amongst other things, that the Constitution of said State should provide by an article forever irre-
22 vocable without the consent of the Congress of the United States that the people inhabiting said territory do agree and declare:

"That the lands belonging to citizens of the United States residing without the said State, shall never be taxes higher than the land belonging to residents thereof."

The people of the then territory of the State of Nebraska, duly assembled, did prepare and adopt a constitution and submitted the same to the electors of said territory to be adopted or rejected. The said constitution was duly adopted by the electors of said State, and was approved by the Governor of the territory of Nebraska, February 9, 1866, and is known as the Constitution of the State of Nebraska of 1866. Amongst other things it was provided in Article XI of said Constitution in section six thereof, that:

"This constit-ion is formed, and the State of Nebraska asks to be admitted into the Union on an equal footing with the original states, on the condition and faith of the terms of the propositions stated and specified in an act of congress, approved April 19, 1864, authorizing the people of the territory to form a constitution and state government; the people of the State of Nebraska hereby accepting the conditions in said act specified."

Whereby the provisions and conditions of the Enabling Act of Congress above referred to, became a part of the organic law of the State of Nebraska, irrevocable excepting by the consent of the Congress of the United States.

23 Two constitutions were subsequently adopted by the people of the State of Nebraska; one in 1875 and the one now in effect, in 1919. But plaintiff alleges that the Congress of the United States has not consented that the lands belonging to citizens of the United States residing without said State shall be taxed higher than

the land belonging to residents of the State of Nebraska, and plaintiff further invokes the protection of the provisions of the Enabling Act referred to as adopted and ratified by the electors of the State of Nebraska, evidenced in the constitution of 1886, Pg. 51 Gen. Stat. of Neb. 1873.

Plaintiff further alleges that including branches and spurs, there are 6,457.9 miles of railway owned and operated by various railroad corporations in the State of Nebraska, of which but 798.12 are owned by corporations, citizens and residents of the State of Nebraska; that of such mileage plaintiff owns and operates 2,861.6 miles, and the 3,659.78 miles remaining, after deducting the mileage owned by residents of the State of Nebraska, are all owned and operated by non-residents of the State of Nebraska, citizens and residents of states other than the State of Nebraska. That a great part of the property of the carriers, particularly of plaintiff, thus owned and operated with the State of Nebraska, consists of real estate and its appurtenances.

VII.

Plaintiff further alleges that involved in this case for reference and application the more material sections of the statute are referred to by their serial number as contained in the Compiled Statutes, 1922. The constitutional provisions, Federal and State, other than the Constitution of 1866, are contained in said Statutes. The provisions of the Constitution of 1866 referred to are contained in the General Statutes of Nebraska, 1873. The sections are as follows:

Section 1 of Article XIII of the Constitution of Nebraska, Page 89:

"The necessary revenue of the State and its governmental subdivisions shall be raised by taxation in such manner as the legislature may direct; but taxes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises, and taxes uniform as to class may be levied by valuation upon all other property. Taxes, other than property taxes, may be authorized by law. Existing revenue laws shall continue in effect until changed by the legislature."

It is further provided by Section 4 of Article VIII of the Constitution of Nebraska, Page 91:

"The legislature shall have no power to release or discharge any county, city, township, town or district whatever, or the inhabitants thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, or to any municipal corporation, nor shall commutation for such taxes be authorized in any form whatever."

It is provided by Section 28 of Article IV of the Constitution of Nebraska, Page 74:

"A tax Commissioner shall be appointed by the Governor with the advice and consent of the Senate. He shall have jurisdiction over

the administration of the revenue laws of the state, and together with the Governor, Secretary of State, State Auditor and State Treasurer shall have power to review and equalize assessments of property for taxation within the state. He shall have such other powers and perform such other duties as the Legislature may provide. His term of office and compensation shall be as provided by law."

It is provided in Section 5820, Page 1827, that:

"All property in this state, not expressly exempt therefrom shall be subject to taxation, and shall be valued and assessed at its actual value. 'Actual value' as used in this Act, shall mean its value in the market in the ordinary course of trade."

Section 5821 exempts from taxation property of the State and its governmental subdivisions, property owned by and used exclusively for agricultural and horticultural societies, owned and used exclusively for educational religious, charitable or cemetery purposes, if not owned or used for financial gain or profit, household goods of the value of $200 to each family, and increased value of land by reason of shade and ornamental trees planted along the highway.

Section 5822 provides:

"Taxes on all real property shall be a first lien thereon from and including the first day of December of the year in which they
26 are levied until the same are paid, except general city taxes on real property within the corporate limits of cities of the metropolitan class, which shall be a first lien thereon from and including the first day of May following the levy, until the same are paid."

Section 5823:

"Taxes assessed upon personal property shall be a first lien upon the personal property of the person to whom assessed from and after the first day of November of the year in which they are assessed, until paid."

Section 5825:

"All general taxes due the state and its governmental subdivisions shall be a first lien on the real estate on which levied, and take priority over all other encumbrances and liens thereon."

Section 5827:

"The Tax Commissioner shall be appointed by the Governor with the advice and consent of the Senate and shall receive Five Thousand Dollars per annum, and have jurisdiction over the administration of this Act and all the revenue laws of the state; subject to review by the State Board of Equalization and Assessment and together with the Governor, Secretary of State, State Auditor and State Treasurer, shall have power to review and equalize assessments of property for taxation within the state, and said officers collectively shall consti-

tute and be known as the State Board of Equalization and Assessment."

Section 5829:

"The form of all blanks, forms schedules, books of instruction, assessment and tax books, records and all other forms which may be necessary or expedient for the proper administration of this act, or of the revenue laws in general shall, on or before the fifteenth day of January of each year be approved by the tax commissioner, and all such schedules, forms and documents shall be uniform throughout the several counties in so far as the same is possible and practicable. The tax commissioner shall, on or before the first day of January of each year furnish the county clerk of each county forms for all schedules for the listing and assessment of personal property; and the county clerk of each county shall, on or before the first day of April in each fear cause to be printed a sufficient number of such schedules for the use of the county and deliver the same to the county assessor."

Section 5830:

"Whenever it shall be made to appear to the Tax Commissioner that any property has been improperly omitted from the tax list or assessment roll of any district or county for any year, or, if assessed, that the same has been undervalued, as compared with like property in the same county, or in the state, so that the assessment for such year in such district or county is grossly unfair or inequitable whether the same has been equalized by the county Board of Equalization or the State Board of Equalization and Assessment or not, he shall report the same to the State Board of Equalization and Assessment, and said Board shall examine into the facts, and shall cause to be served upon any person, company or corporation affected by such reassessment, an order to show cause why such reassessment should not be made; which order to show cause shall be served for a period of at least ten days prior to the date fixed for such hearing; and at such hearing if satisfied that it would be for the best interest of the state that reassessment of such property be made, said board may appoint a Special Assessors as may be necessary to cause a reassessment to be made of all or any real and personal property, or either, in any such district or county as to them may seem proper, to the end that all property in such district or county shall be assessed, equitably as compared with like property in such district, county or state. Provided, however, that no such action shall be taken by the Tax Commissioner, or others under the provisions hereof, unless the same be commenced by December first, next following the date of the original assessment. Provided, further, however, that no land shall be re-assessed under the provision of this section where the same shall have changed ownership otherwise than by will, inheritance or gift. Provided, further, that where an appeal has been taken from the original assessment and an adjudication thereof had by the court, such adjudication shall be final and not subject to modification by re-assessment."

Sections 5839 and 5840, provide:

"The State Board of Equalization and Assessment is hereby
28 empowered, and it is made its duty, to assess all property of the railroads and railroad corporations in the State of Nebraska, Provided, however, that all machine repair shops, general office buildings, store houses, and also all real and personal property outside of right of way and depot grounds, as of and belonging to any such railroad and telegraph companies, shall be listed for purposes of taxation by the principal officers or agents of such companies with the assessors of any precinct of the county where such real or personal property may be situated, in the manner provided by law for the listing and valuation of real and personal property."

"The Board on the first Monday of May of each year shall proceed to ascertain all property of any railroad company owing, operating or controlling any railroad or railroad service in this state, which for the purpose of assessment and taxation, shall be held to include the main track, side track, spur tracks, warehouse tracks, roadbed, right of way and depot grounds, and all water and fuel stations, buildings and super-structures thereon, and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand and supplies provided for operating and carrying on the business of such road, in whole or in part, together with franchises and all other property of such railroad company used or held for the purpose of operating its road, and appraise and assess the same as personal property as herein provided."

Complainant further alleges that Sections 5841, 5842 and 5843 provide:

"Section 5841: On or before the fifteenth day of April in each year, the person, company, or corporation owning operating or controlling any railroad or railroad service in this state, shall, by its president, secretary or principal accounting officer, return to the state Board of equalization and assessment a sworn statement or schedule of the property of such company on the thirty-first day of March preceding."

and then prescribed specifically the facts which shall be set forth in said report.

29 Sec. 5842. "The returns of railroad companies or corporations shall not be held to be conclusive as to the value of the property, but the state board of equalization and assessment shall, from all the information which it is able to obtain, include records of the railway commission on other regulatory body, find the true value of all such property, including tangible property and franchises and shall assess the same on the same basis as other property is hereby required to be assessed. The valuation of each mile shall be determined by dividing the whole value by the number of miles of the main track of each road or line."

Section 5843: provides a penalty for the failure of any company to make the return required by Section 5841:

Complainant further alleges that Sections 5844 to 5850, provide:

"Any railroad company operating any road within the State of Nebraska shall annually, on or before the first day of April report to the County Clerk of each county through which its line of road runs the number of miles of main track situated within each governmental subdivision in the county, together with all machine and repair shops general office buildings, store houses, and all real and personal property not on the right of way."

"The State Board of Equalization and Assessment shall have power to require the attendance before it of any officer, agent or servant of any railroad or railway company having any portion of its property in this state, to answer under oath such questions touching said property as may be propounded by the Board. The Board shall have power to issue whatever notice or process may be necessary to compel the attendance of such person as a witness, which process may be served by any person deputed by the Board for that purpose. Any person who shall fail to respond to such process, or who shall refuse to answer any proper question put to him by the Board shall forfeit the sum of five hundred dollars, to be recovered in a civil action prosecuted in the name of the state."

"Any officer, agent or servant of any railroad company, or other person, who shall knowingly make any false answer to any question put to him by such Board, or in its behalf, touching the property, business, money and credits, or value thereof, of such company, shall be guilty of perjury."

"The State Board of Equalization and Assessment after having valued and assessed all the railroad property in this state in accordance with the provisions of this article, shall immediately make return to the County Clerk of each and every county in which any portion of the railroad property as designated in this article may be located, to be used as the basis of levy for the county and governmental subdivisions through which any railroad or part thereof may extend."

"Such return shall include the following:

(1) Number of miles of track of each railroad located in each governmental subdivision in the county, and the total length of such road in the county:

(2) The average valuation per mile of such road;

(3) The valuation that shall be placed to the credit of such governmental subdivision in the county."

"The State Board shall transmit to each county as soon as practicable after receiving returns from the railroad company, a statement from such returns showing as to each county and railroad all machine and repair shops, general office buildings, store houses, and also all real and personal property outside of such railroad right of way, and depot grounds, not included in the property herein required to be assessed by the State Board of Equalization and Assess-

ment, and in what governmental subdivision located, which return shall be for the benefit of the county board and local assessors."

"Railroad property assessed by the State Board shall be apportioned by the County Clerk among the respective governmental subdivisions in which the same may be entered on the tax list and collected by the County Treasurer."

31 Plaintiff further alleges that Sections 5901, 5904 and 5905 provide:

"The State Board of Equalization and Assessment shall, on the first Monday of July of each year, meet at the state capitol for the purpose of equalizing assessments. They shall proceed to examine the abstracts of property assessed for taxation in the several counties of the state, including the railroads entirely within such county, and all other property, and shall equalize such assessments so as to make the same conform to law, and for that purpose they shall have the power to increase or decrease the assessed valuation of any county or tax district, and such increase or decrease shall be made by a percentum, and the per cent of increase or decrease when made shall be certified to the county clerk of the proper county, who shall thereupon add to or deduct from the assessment of each piece or parcel of property in the county affected an amount equal to the per cent of increase or decrease fixed by the state board. The state board shall have the power in equalizing assessments, to increase or decrease the assessed valuation of any class, classes or kinds of property in any county or tax district, whenever in their judgment it shall be necessary to make such assessment conform to law; and such increase or decrease, when made, shall be certified to the county clerk and by the county clerk extended upon the tax rolls, as hereinbefore provided; but in the extension of valuations the county clerk shall reject all such amounts as may fall below two dollars and fifty cents and all amounts of two dollars and fifty cents or more shall be extended as the next higher five dollars or multiple thereof, this making all valuations end in cipher or five. In the event it shall appear to the state board of equalization and assessment that a just equitable and legal assessment of the property in the state cannot be made without increasing or decreasing the valuation as returned by any county, the board of equalization and assessment shall issue a notice to the counties which the board deems either under-valued or over-valued and shall set a date for hearing at least five days following the mailing of such notice. At such hearing legal representatives of the counties may appear and show cause why the valuation or valuations of their county should not be increased or decreased by the State Board, and after a full hearing, the
32 state board shall enter its order and certify the same to the county clerks of the proper counties as hereinbefore set forth in this section. The notice provided for in this section shall be mailed to the county clerk, county assessor, and chairman of the County Board. From any final decision of the state board of equalization and assessment, any person, county or municipality affected

thereby may prosecute a writ of error to the supreme court and upon demand therefor the state board shall prepare and certify a transcript of its records and proceedings involved in such decision, upon payment by the party demanding the same of a fee of ten cents for each one hundred words. Notice of intention to obtain a review shall be filed within ten days from the date of the entry by the board, and when docketed said cause shall be given precedence by the supreme court over all civil cases."

Sec. 5904. "The state board shall determine the amount of all taxes required for state purpose, and the rate of taxation upon all tangible property in the state necessary to raise the same, and make a levy of such taxes throughout the state. The rate of the general tax on tangible property together with the state tax on intangible property shall be sufficient to realize the amount necessary to meet appropriations made by the legislature for the year in which the tax is levied, and an additional sum not exceeding twenty per cent. of the amount of any existing state indebtedness."

Sec. 5905. "On or before the second day of August in each year the state board shall transmit to the county clerk of each county a statement of the rate of taxation required for the general state tax, the state school tax and any other general or special taxes, as directed to be levied and collected by the state board."

Complainant further alleges that Section 5996 provides:

"The county treasurers of the several counties of this state shall be ex-officio county collectors of all taxes levied within their respective counties. No demand for taxes shall be necessary, but it shall be the duty of every person subject to taxation to attend at the treasurer's office and pay his taxes."

33 Sections 5997 to 6017, inclusive, prescribe a procedure to be followed by the treasurer in collecting all taxes and authorizes him to issue distress warrants for the collection of taxes, in which the personal taxes become delinquent on December 1st of each year.

VIII.

Plaintiff in accordance with the statutes of Nebraska made a report to the State Board of Equalization and Assessment and the county assessors, of the various counties in the state into or through which its lines of railway were constructed and are operated strictly in accordance with the law; that subsequently and on the 15th day of June, 1922, the State Board of Equalization and Assessment fixed the valuation to be assessed for taxing purposes at $137,589,782.00 on a basis of 2,861.6 miles of single track, the order being in the words and figures following to-wit:

"Office of the Governor, Lincoln, Nebraska, June 15th, 1922.

"The State Board of Equalization reconvened at the office of the Governor at 10:30 A. M., all members present, the Governor in the

chair. The question of railroad values for the year 1922 was then discussed by the Board, and the following resolution was unanimously adopted. Resolved, That we, the State Board of Equalization and Assessment, in regular session held for the purpose of valuing and assessing the railroads in the State of Nebraska, for the purpose of taxation of their property in the said state, and having given due and full consideration to the returns furnished said Board by
34 the several railroad companies and having taken into consideration the main track, side track, spur track, warehouse tracks, road bed, right of way and depot grounds and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand, and supplies, monies, credits, franchises, and all other property of said railroad companies, and having taken into consideration the gross and net earnings of the said railroads, the total amount expended in operation and maintenance, the dividends paid, the capital stock of each system or road, and the market value thereof, and the total amount of secured and unsecured indebtedness, and from all the information which we are able to obtain, do hereby ascertain, fix and assess for the purpose of general taxation, the full actual value of the property of each of the several systems or companies in the State of Nebraska, as hereinafter recited:

Railroad.	Miles of track.
Chicago, Burlington & Quincy	2,861.60

Total Actual Valuation: $137,589,782.00.

That subsequently and during the meeting of the State Board, as provided by Section 5901, the said Board by complaint was notified that the assessing officers and Equalization Boards in their respective counties for taxation purposes for the year 1922 assessed all property within their jurisdiction at not to exceed fifty per cent of the actual value of such property. That the said State Board then well knew that the constitution and laws of Nebraska provided that all property in the state subject to taxation should be valued at its actual value for taxing purposes on the same basis used for the valuation and assessment of all other classes of property not exempted by
35 law from taxation; that if the valuation of complainant's property in 1922 for taxation purposes should not be reduced to the same percentage of value that other property subject to taxation in said state has been valued for assessment purposes by the several county assessors and board of equalization in 1922, or unless the valuation of all other such property should be increased from fifty per cent of its value to its actual value, that is the valuation should be doubled, complainant would be denied the equal protection of the law guaranteed by the Constitution of the United States and the State of Nebraska, and its property would be taken for public purposes without just compensation and without due process of law, in derogation of the Fifth and Fourteen- amendments to the Constitution of the United States, and of sections 3 and 21 of Article 1 of the Bill of Rights of the Constitution of the State of Nebraska.

That notwithstanding all of said knowledge and notice of inequality of the assessment of carrier's property as compared with that of all other classes of property the said State Board at its meeting made no change in the assessment of the value of your complainant's property either by reducing it to the same basis as that upon which all other property was valued nor by increasing the assessed value of all other property to its actual value as required by the constitution and laws of the State but did make some slight material equal-
36 izations as between counties and by its final decision and resolution as of August 2nd, 1922, intentionally maintained and preserved the inequalities in valuation of the several classes of property and retained the valuation of your complainant's property at 137% of its actual value while in the final adjustment all other property in the State of Nebraska (including real estate) was assessed not to exceed sixty-five per cent of its actual value. The said State Board thereupon determined the amount of all taxes required for state purpose and made a levy therefor of such as were within its jurisdiction.

IX.

Plaintiff further alleges that pursuant to Section 5905 aforesaid the State Board complied therewith and immediately on said August 2nd, 1922 certified said levy and the results of its equalization to the respective county clerks and deprived plaintiff of any opportunity of either adopting or pursuing any legal procedure to review the acts of said State Board either by error or praying for an injunction against its illegal acts as herein set forth or otherwise.

Plaintiff further alleges that the valuation per mile of plaintiff's property so fixed by the State Board of Equalization and Assess-
ment was forthwith by the county clerks transcribed upon the
37 tax lists of their respective counties against plaintiff and its property; that the valuation per mile so illegally fixed by the State Board of Equalization and Assessment by the county clerks has been applied per mile to the levies provided by law for raising revenue for state, county, township, school district, and other purposes, and the county treasurers will force plaintiff to pay those taxes on said grossly excessive and unlawful valuations unless restrained by the order of this Court.

That the treasurers defendant are not authorized to accept any tender made by plaintiff of the portion of the taxes which plaintiff acknowledges to be due but by law must collect the full amount certified to them.

That the said taxes became a lien on plaintiff's property on November 1st and will be due and delinquent December 1st, 1922, and that said defendants are now demanding payment of said taxes in full. Plaintiff alleges that no complaint is made herein as to taxes levied for city and village purposes.

X.

Plaintiff further alleges that the defendant Tax Commissioner, W. H. Osborne, Jr., and the State Board of Equalization and Assess-

ment have notwithstanding plaintiff's yearly complaint, continually decreased annually the assessed value of all property other than Railroad property, but more particularly for this suit commencing with the year A. D. 1920, and during said time has likewise
38 continually increased the valuation of plaintiff's property within the State of Nebraska, which is accurately described by the following figures:

Total Value of Land and Improvements in Nebraska:

Year 1920, $2,144,472,350.00 being 68% of its actual value.
Year 1921, 1,831,048,877.00 being 53% of its actual value.
Year 1922, 1,753,312,309.00 being 62% of its actual value.

C. B. & Q. total valuation for said years are:

Year 1920	$131,755,655.00
Year 1921	131,755,725.00
Year 1922	137,589,782.00

That during each of said years the actual value of plaintiff's property in the State of Nebraska did not exceed $100,000,000.00.

The actual result being that the lands and all other property did not pay taxes to exceed 50% of their actual value and will not exceed 65 per cent for the year A. D. 1922; while this plaintiff will, if the assessment now complained of is permitted to stand, pay taxes at 137% of its actual value.

XI.

Now comes the plaintiff and — leave of court amends its Bill by substituting for paragraph XI, page 27, the following:

Plaintiff alleges that its railroad extends through the following counties in the State of Nebraska, and that the amount of the tax levied upon the valuation herein complained of and the il-
39 legal .5255 percentage thereof in each county resulting from the wrongful scheme and rule valuation, which the respective treasurer of each county, defendant herein, is demanding and threatening to collect with the legal portion, in the performance of their alleged respective duties, are set forth in the columns following, to-wit:

County.	Tax levied.	Illegal part.
Adams	$41,507.93	$21,812.42
Antelope	8,660.55	4,551.12
Blaine	18,631.91	9,791.07
Box Butte	39,489.07	20,751.48
Buffalo	16,134.34	8,478.60
Burt	8,536.14	4,485.74
Cass	33,922.44	17,826.24
Cedar	6,115.01	3,213.44
Chase	9,413.41	4,946.75
Cheyenne	19,200.37	10,089.79

County.	Tax levied.	Illegal part.
Clay	43,618.56	22,921.55
Colfax	1,489.61	782.79
Custer	61,138.76	32,128.42
Dakota	12,707.13	6,677.60
Dawes	23,755.86	12,483.71
Dawson	1,486.99	781.41
Dixon	10,135.11	5,326.00
Dodge	15,477.62	8,133.49
Douglas	14,508.03	7,623.97
Dundy	50,971.05	26,785.29
Fillmore	53,768.21	28,255.19
Franklin	36,310.91	19,081.38
Frontier	20,481.78	10,763.18
Furnas	51,165.77	26,887.61
Gage	51,430.94	27,026.96
Garfield	1,572.57	826.39
Gosper	10,565.71	5,552.28
Grant	23,312.07	12,250.49
Greeley	18,927.49	9,946.40
Hall	19,328.98	10,157.38
Hamilton	26,727.49	14,045.30
Harlan	66,728.73	35,065.95
Hayes	3,657.76	1,922.15
Hitchcock	44,871.83	23,580.15
Holt	8,904.30	4,679.21
Hooker	25,441.01	13,369.25
Howard	14,706.43	7,728.22
99 Jefferson	23,319.62	12,254.46
Johnson	28,172.00	14,804.38
Kearney	38,350.86	20,153.37
Lancaster	71,540.18	37,594.36
Lincoln	34,891.20	18,335.32
Merrick	9,709.18	5,102.17
Morrill	28,703.66	15,083.77
Nemaha	14,265.39	7,496.46
Nuckolls	26,166.26	13,750.31
Otoe	18,718.08	9,836.35
Pawnee	25,722.12	13,516.97
Perkins	25,272.56	13,280.73
Phelps	31,693.22	16,654.78
Pierce	8,471.05	4,451.53
Platte	2,489.35	1,308.15
Polk	1,165.48	612.45
Red Willow	58,486.17	30,734.48
Saline	48,741.51	25,613.66
Sarpy	34,965.27	18,374.24
Saunders	42,247.78	22,201.20
Scotts Bluff	25,133.48	13,207.64
Seward	27,448.81	14,424.34

County.	Tax levied.	Illegal part.
Sheridan	35,626.58	18,721.76
Sherman	26,522.10	13,937.36
Sioux	10,630.76	5,586.46
Thayer	24,471.39	12,859.71
Thomas	32,323.45	16,985.97
Thurston	13,544.89	7,117.83
Valley	15,015.67	7,890.73
Webster	37,728.55	19,826.45
Wheeler	1,649.44	866.78
York	25,761.76	13,537.80

Because of official tax statements not being received for the year 1922 plaintiff on information and belief alleges that for the year 1922, the taxes for the two following counties with the illegal portion will appear as follows:

County.	Tax levied.	Illegal part.
Butler	$15,000.00	$7,882.50
Richardson	35,000.00	13,392.50

Endorsed on margin: "Amended by leave given December 2, 1922."

41 XII.

Plaintiff further alleges that the State Board in its resolution adopted on June 15th, 1922, valuing and assessing plaintiff's property in Nebraska, recites that there was considered, with other classes of property, plaintiff's moneys, credits, net earnings, dividends paid, the capital stock and market value thereof. That as to this plaintiff alleges that it has a value composed of property consisting of credits, investments and securities of various designations which are held by it and which have no relation to the operation of the railroad in Nebraska or elsewhere, nor has it added to the value of the road or the rights by it exercised in the State of Nebraska either for the year 1922 or prior years. It also has a definite situs in other states and for the year A. D. 1922 it was there subject to assessment and taxation separately and apart from the railroad at the places where it was assessable and taxable in conformity to the laws of the respective states where such properties are situated, they being as follows:

	Estimated value.
Elevator Investments, Chicago and Burlington...	$326,844.59
Coal Investments, Illinois	3,663,500.68
Sundry Investments	3,851,553.08
Union Depot Securities	175,349.12
Investments in Terminals	5,319,844.12
Miscellaneous Bonds	1,788,882.22
Stocks & Bonds of Roads held for control.....	27,922,783.87
Cash & Cash Assets—Balance	7,104,797.46
Local property, Illinois	11,500,000.00
Local property, Iowa	645,000.00
42 Local property, Iowa (Woodbury County)..	13,820.00
Local property, Wisconsin	48,000.00
Local property, Minnesota	77,500.00
Local property, Missouri	7,867,500.00
Local property, Kansas	267,300.00
Local property, Nebraska	2,171,884.00
Local property, South Dakota	35,320.00
Local property, Wyoming	152,200.00
Local property, Colorado	516,150.00
North Platte to Bridgeport, Nebraska	229,327.00
	$73,677,476.14

Includes cost of Colorado & Southern Ry. Stock, $19,643,451.88. That all of said properties and the income therefrom are reflected in the market value of plaintiff's stocks, bonds, surplus and dividends, and the value of said property so elsewhere assessable and taxable for the year A. D. 1922 aggregates $73,677,476.14. That to aid the Board in arriving at a just valuation of plaintiff's property within the State of Nebraska plaintiff with other items submitted the foregoing items of property situate beyond the State of Nebraska and that locally assessed in Nebraska and beyond the Board's jurisdiction, but notwithstanding said statement so furnished, it intentionally, systematically but erroneously included said property in ascertaining and assessing the value of your plaintiff's property for said year 1922, and likewise for the years A. D. 1920 and 1921. That the same was included within said valuation or that percentage thereof which the said State Board took as representing the prorata
43 therein, which should be taken as the value of plaintiff's property in the State of Nebraka for each of the aforesaid years. In this your plaintiff further alleges that in so far as said properties were considered by the State Board and taken as a part of the valuation of plaintiff's property, their action was illegal and void and that the value of said properties in the aforesaid sum should have been deducted before ascertaining and assessing that part of the value which belonged to the State of Nebraska. That plaintiff is entitled to a reduction of its valuation so made by the State Board for taxation by the percentage allocated to the State of Nebraska by the Board which plaintiff alleges is not less than twenty-three per cent for the year A. D. 1922., or a total of $16,945,819.00.

XIII.

Plaintiff further states that the State Board of Equalization and Assessment and the several county assessors and county boards of equalization of the state of Nebraska, have for many years last past assessed and valued farm land in the state of Nebraska at much less than the true value thereof; that the provision in the statutes of Nebraska that the real estate shall be assessed separately from the improvements thereon, permits the local assessors and taking officers to and on information and belief plaintiff alleges that they almost uniformly do assess the improvements at but a small fraction
44 of their actual value, to wit, not to exceed ten to twenty-five per cent of their actual value, and where buildings thereon, frequently expensive in character, are constructed upon land, the local assessors for years have ignored such improvements, and do not assess them at all. That during the year 1920 farm lands in the State of Nebraska constituted more than fifty-five per cent of the value of all property in the state, other than railroad property, and the county assessors and the State Board of Equalization and Assessment fixed for taxing purposes the value of such real estate at but sixty-eight per cent of the true value of such farm land; that the valuation of farm land in the State of Nebraska as returned by the county assessors of the several counties, and as adjusted and equalized by the State Board of Equalization and Assessment for the year 1921 was fixed at but forty-seven per cent of the true value of said farm lands; that such under-valuations for taxing purposes by said officials was the result of a systematic, intentional, notorious and continuous undervaluation of farm lands by the several county assessors and the State Board of Equalization and Assessment for taxing purposes; that in 1922 all farm lands in the state of Nebraska were likewise undervalued for taxing purposes, and their valuation fixed at not to exceed 62 per cent of their true value by the local taxing authorities, and the State Board of Equalization and Assessment knowingly
45 and intentionally joined and participated in further pursuance of the scheme and plan that had obtained for many years, and yet obtains in the State of Nebraska, to undervalue farm lands for taxation for the purpose of relieving such lands of their just share of the taxing burden in the state by refusing to raise said valuation or to equalize it with the properties of your plaintiff. In that behalf plaintiff alleges that the defendant Osborne, as Secretary of the State Board of Equalization for the year 1920 published a statement showing the result of the valuation by the county assessors as equalized by the State Board of Equalization with respect to farm lands as follows:

"The abstracts of assessment have been received covering lands and improvements for all the counties except Arthur. The returns show that the precinct assessors and other local assessing officials throughout the state have placed a value on lands and improvements which average over 68 per cent of the average value as established by the ratio process based on actual sales. It would seem only fair and just that the State Board would accept this average valuation

established by almost 2,000 precinct assessors and in equalizing the land and improvements, between counties, maintain, as nearly as possible, for each county, an assessed actual valuation of 68 per cent of the actual value as established by the ration process."

And plaintiff alleges and charges that for the year 1920 the valuation of farm lands for taxing purposes in Nebraska was equalized and fixed by the State Board of Equalization at only 68 per cent of the true value thereof in violation of the Constitution and Laws of the State of Nebraska, as above set forth. Plaintiff further alleges and charges that the adoption of said valuation of 68 per cent for the year 1920, on real estate was intentional and deliberate and pursuant to concerted action by the State Board of Equalization and the several county assessors and in that behalf alleges and charges that the said State Board of Equalization made and published a statement of the result of its action as a Board of Equalization for the year 1920 as follows, to wit:

"In the matter of equalization between counties, the State Board has adhered to the early announced plan of accepting for valuation purposes the average value placed on lands and improvements by the precinct and county assessing officials. For equalization between counties, the value returned by the assessing officials of each county has been compared with the average real value, as established by the ration process, based on bona fide sales from July 1, 1918 to July 1, 1919. The equalization of the counties on the basis of the sale average was requested by the Board at the meeting of the assessing officials of the counties held July 20, 1920. The ration process, used in correcting the sale averages, is the plan used by Wisconsin for a number of years and Minnesota and other states have adopted the same plan.

Under this plan of equalization the State Board has the combined judgment as to value, of the assessing officials of the counties and of the buyers and sellers of real estate for a year's period. The year taken was previous to the land boom and does not cover the period of the highest prices.

The valuations as returned by the County Boards averaged 68 per cent of the real value, as determined by the ration process, and the State Board adopted this 68 per cent as the basis for equalizing purposes."

Plaintiff further alleges and charges that the State Board of Equalization and the County Assessors of the several counties, pursuant to said purpose and plan to undervalue all farm lands in the state for taxing purposes for the year 1921 met in convention at the City of Lincoln on the 18th day of March, 1921, and adopted a resolution in words and figures following, to wit:

"Resolution adopted at State Assessors' meeting, March 18, 1921. At a meeting of the county assessors, held at Lincoln, Nebraska, on March 18, 1921, the following resolution, introduced by Harry W. Scott, of Pawnee City, was adopted:

Minnesota ... St. Paul, Min.

'Whereas, there has been an expression representing the sentiment of sixty-four counties and the result of such expression seems to average 15 per cent reductions under 1920 real estate values.

'Therefore, be it resolved, that it be the sense of this meeting that the aggregate return of the value of real estate in each county be returned to the State Board at not to exceed a 15 per cent reduction.

"It being understood that this shall in no way be binding upon any county, but merely suggests a uniformity of action.

"Dated this 19th day of March, 1921. (Signed) G. L. Munford, Secretary-Treasurer."

Plaintiff further alleges and charges that the defendant, Osborne, as Tax Commissioner, provided each and every county assessor in the State of Nebraska with a copy of said resolution and stated to said assessor in writing as follows:

48 "The above and foregoing is a verbatim copy of a resolution adopted by the County assessors of the State, at their meeting, held in the City of Lincoln, on March 18, 1921, and it is requested by this department that you read the resolution over carefully, so that the result of their labors will be in accordance with the thought of the conference. We very much desire to avoid the necessity of being compelled to again equalize to any great extent by counties this year, feeling as we do, that we have a very good equalization over the State at this time, but where the occasion demands, the State Board will not shirk its duty to fairly equitably raise of lower any county, to the end that each bears its just relation, one to the other."

Plaintiff further alleges and charges that the said several county assessors, pursuant to said express purpose, returned the valuation of real property in their respective counties at only about 53 per cent of the true value thereof, and that the State Board of Equalization upon receiving said returns from the said several counties equalized the valuations on real property so that the average valuation does not exceed 53 per cent of the true value of real property in the State of Nebraska for the year 1921: the said concerated action by the said county assessors and the State Board of Equalization to return a valuation for taxing purposes on real property of only about 53 per cent of the true value thereof, was in violation of the Constitution and Laws of the State of Nebraska and in violation of the duties of said officials and in violation of the rights of the plaintiff, whose property has been fixed by said Board of Equalization at more than the true full actual value thereof.

49 That because the taxing authorities of the State of Nebraska were cognizant of the fact that the railroad companies of the State of Nebraska were making extensive investigations to bring into view the truth with respect to the undervaluation of farm lands in the State of Nebraska, the State Tax Commissioner, issued his instructions to county and precinct assessors in Nebraska in 1922, advising them that it was their duty, as follows:

"We will first take up the Rural Real Estate Assessment which must be made again this year. Those of you who are familiar with the old Revenue Law will recall that prior to 1921, real estate was only assessed once every four years but the Legislature of 1921 passed a law requiring that the new assessment pertaining to real estate should be made in 1921, again in 1922 and every two years thereafter. Real Estate generally was reduced approximately fifteen per cent uniformly over the State in the year 1921. This emergency legislation on the part of the Legislature was made in the hope that some relief could be given the owner of real property in the way of taxes, but such was not the case, for, notwithstanding the fifteen per cent reduction in the valuation of real property uniformly over the State, this reduction was not reflected in the real estate tax receipt, nor could it be, for the reason that there is obviously only one way to accomplish this result and that is lower the expenditures of the State and its taxing subdivisions. We are compelled to make another assessment of real estate this year, 1922, which will stand for two years or until 1924 when another assessment will be made. The only instructions that I am permitted to give you in valuing this class of property is that directed to you by the statutes, namely at its actual value, and as defined in the Revenue Law, Actual Value means its actual value in the market in the ordinary course of trade."

Plaintiff alleges that the purpose and intent of issuing the instructions in the above form was to encourage county and precinct assessors to further depreciate the value of real estate for taxing purposes under the undervaluations of the preceding years, and that in harmony with such intent and instructions, the county assessors did further in 1922 undervalue farm lands for the purpose of taxation.

XIV.

Plaintiff further alleges that in accordance with Section 5977 the County Assessor of each county in the State of Nebraska prepared an abstract of the assessment rolls of his county, and forwarded it to the State Board of Equalization and Assessment before the 10th day of July, 1922; that said abstracts disclose the total number of acres of taxable land in each county; the aggregate assessed value of all taxable land; and the average assessed value per acre of all taxable land; and that said abstracts show, and the plaintiff alleges the fact to be, that there were at the times hereinbefore mentioned, and now are, in the State of Nebraska, Forty-six million Four Hundred Twenty-one Thousand Six Hundred Forty-seven (46,421,647) acres of taxable land.

Plaintiff further alleges that the said abstracts forwarded by the county assessors to the State Board of Equalization and Assessment also disclose the aggregate assessed value of all town lots and personal property in each county, and the total assessed value of all taxable property therein.

Plaintiff further alleges that in accordance with Section 5901 the State Board of Equalization and Assessment met at the

State Capitol in the month of July, 1922, and proceeded to examine the abstracts of property assessed for taxation in the several counties of the State, and did equalize such assessments as between counties, but that in such equalization the said Board made no substantial change in the aggregate assessed valuation of taxable land or other real estate or personal property.

Plaintiff further alleges that said abstracts as equalized and the resultant tax lists show that the aggregate assessed value of all taxable land, including improvements thereon, in the State of Nebraska for 1922 is One Billion Seven Hundred Fifty-three million, Three Hundred Twelve Thousand, Three Hundred Nine Dollars ($1,753,312,309.00), and that the average assessed value per acre of all taxable land, including improvements thereon, in the State of Nebraska for 1922 is Thirty-Seven and 77/100 Dollars ($37.77).

Plaintiff further alleges that the actual value of all taxable land and improvements thereon, in the State of Nebraska for the year 1922 in the market in the ordinary course of trade was in excess of the aforesaid sum, and that the actual value thereof in the
52 market in the ordinary course of trade was at least Two Billion Six Hundred Ninety-seven Million, Four Hundred Three Thousand, Five Hundred Fifty-one and no/100 Dollars (2,697,403,551.00), or at least Fifty-eight and 10/100 Dollars ($58.10) per acre.

Plaintiff further alleges that said abstracts as equalized and the resultant tax lists show that the aggregate assessed value of all town lots, including improvements thereon, in the State of Nebraska for the year 1922 is Five Hundred Thirty-nine Million Seven Hundred Thirty Thousand Seven Hundred Eighty-five and no/100 Dollars ($539,730,785.00).

Plaintiff further alleges that the actual value of all town lots and improvements thereon, in said State of Nebraska for the year 1922 was and is in excess of the aforesaid equalized value and instead thereof the actual value in the market in the ordinary course of trade was at least Eight Hundred Thirty Million, Three Hundred Fifty-five Thousand Fifty-three and 80/100 Dollars ($830,355,053.80).

Plaintiff further alleges that the said abstracts as equalized and the resultant tax lists show that the aggregate assessed value of all personal property other than property subject to assessment by the State Board of Equalization and Assessment in the State of
53 Nebraska for 1922 is Five Hundred Thirty-one Million Two Hundred Forty-five Thousand One Hundred Eighty-six and no/100 Dollars ($531,245,186.00), that the actual value of all said personal property in said State for the year 1922 in the market in the ordinary course of trade was in excess of the aforesaid equalized value and instead thereof the actual value was at least Eight Hundred Seventeen Million Three Hundred Thousand Two Hundred Eighty-six and no/100 Dollars ($817,300,286.00).

Plaintiff further alleges that by the action of the assessors of the various counties of the State of Nebraska, and by the action of the State Board of Equalization and Assessment, the value of said taxable

d in the State of Nebraska so fixed for the purpose of assessment
d taxation as the basis or taxable value upon which to compute
es under the laws of the State of Nebraska, in truth and in fact
resents not to exceed Sixty-Five per cent (65%) of the real value
said taxable land in the market in the ordinary course of trade and
the reasonable value thereof; and plaintiff avers that the taxable
ds in the State of Nebraska constitute and comprise Fifty-Five per
t (55%) of the taxable property in the State of Nebraska subject
to assessment and taxation and comprise sixty-one per cent
(61%) of said taxable property exclusive of railroads.

Plaintiff further alleges that the value of its property in
State of Nebraska subject to assessment by the State Board of
alization and Assessment under the laws of the State of Nebraska,
s not exceed One Hundred Million Dollars ($100,000,000.00);
plaintiff owns and operates 2,861.60 miles of railroads in the
e of Nebraska and that the value of its said railroad property so
ject to assessment by said Board therefore does not exceed Thirty
r Thousand Nine Hundred Forty-Five and 45/100 Dollars
4,945.45) per mile; but this plaintiff avers that the taxable
e of its property subject to assessment by said Board under the
s of the State of Nebraska, when considered in the light of the
ssment of taxable land and other real and personal property,
ject property subject to assessment by the State Board of Equaliza-
n and Assessment, in said State, as hereinbefore averred, is not in
ss of Twenty-two Thousand Seven Hundred and Fourteen and
/100 Dollars ($22,714.54) per mile, aggregating $64,999,927.66
the State of Nebraska; and plaintiff avers that it is willing to, and
pay such lawful taxes as are levied upon said last aforesaid
or value per mile, or upon such other sum as this County may
ermine to represent the fair and equitable taxable value of its
property per mile as compared to the tax burdens imposed
upon taxable land in said State.

That the systematic assessment upon such basis is, and for
ny years past has been, a matter of public notoriety in the State;
the fact that such assessors have indulged in such habitual, in-
tional, systematic and general custom in so assessing taxable land
other real estate and personal property at materially less than its
e in the market in the ordinary course of trade, was known to the
e Board of Equalization and Assessment at and prior to the time
sessed plaintiff's property; that notwithstanding this knowledge
the part of the said State Board of Equalization and Assessment, it
ntionally assessed the plaintiff's property subject to assessment
t at One Hundred Thirty-Seven per cent (137%) of its actual
e.

XV.

Plaintiff further alleges that the action of the Board of Equaliza-
n and Assessment, and the several county assessors and county
rds of equalization in undervaluing farm lands for the purpose
xation pursuant to said intentional, concerted and pre-arranged
, while at the same time valuing the property of the plaintiff

at one hundred per cent and more of its true value for taxing purposes, constitutes an unlawful discrimination against plaintiff,
56 and compels it to bear more than its just proportion of the burden of taxation in the State of Nebraska in violation of the constitution and laws of the State of Nebraska, as above set forth, and in violation of the guarantees contained in the Enabling Act above referred to as ratified and confirmed by the electors of the State of Nebraska. That the action of the State Board of Equalization and Assessment, and of the several county authorities in intentionally and systematically undervaluing farm land, which constitute fifty-five per cent of the taxable property of the State, while requiring plaintiff to pay taxes on the full actual value and more of its property, constitutes an unjust and an unlawful discrimination against plaintiff, and denies to plaintiff the equal protection of the law guaranteed by the Constitution and laws of Nebraska, guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States, and deprives plaintiff of its property without due process of law, takes its property for public use without compensation in violation of the Fourteenth Amendment to the Constitution of the United States.

XVI.

Plaintiff further alleges that the intentional and systematic undervaluation by the State Board of Equalization and the several
57 county assessors of farm lands within the State of Nebraska, being about fifty-five per cent of the total taxable property in said state, at only 62 per cent of the true value thereof, for taxing purposes, while valuing the property of the plaintiff at one hundred thirty-seven per cent or more of its true value, and requiring plaintiff to pay taxes on said value constitutes and is an unlawful burden upon interstate commerce, in that more than 68 per cent of the commerce carried by plaintiff over the lines of its railroad in the State of Nebraska is interstate in character; that all taxes which plaintiff is required to pay in the State of Nebraska are chargeable to expenses of operation, and that for the defendants, by said unlawful and intentional discrimination in valuation between plaintiff and other taxpayers in the State, to impose an undue and unlawful expense upon the handling of interstate commerce, constitutes and is an unlawful discrimination against interstate commerce, and an unlawful burden thereon in violation of the Constitution of the United States.

XVII.

Plaintiff further alleges that it is entitled to the equal protection of the laws of the State of Nebraska; that said laws of the State of Nebraska make it the duty of the State Board of Equalization and the several county assessors to fix valuations of all property in
58 the State at true, full, actual value; that the said State Board of Equalization has full power to correct any inequality of valuations which may be returned by the several county assessors, and it was the duty of said State Board of Equalization so to do, but

plaintiff alleges that the said State Board of Equalization, in violation of the Constitution and Laws of the State of Nebraska, not only did not change said valuation so as to put plaintiff upon a basis of equality with other taxpayers, as required by law, but the said State Board of Equalization intentionally co-operated with the said county assessors for the purpose of returning the value of farm property at only 62 per cent of the true value thereof for taxing purposes, while requiring the plaintiff to pay taxes upon more than the full actual value of its property within the state; that the said State Board further purposely and intentionally refused to correct an error in plaintiff's return to the State Tax Commissioner for the use of the State Board, which consisted of plaintiff's return on the prescribed forms of the State Board designated as Form "G" and Form "9" in that in Form "G" the operating expenses in Nebraska were given as $27,420,906.19, when they actually were $31,289,319.97, the difference being $3,868,413.68. That by reason of said error the net income in Nebraska for the year 1921 was greater than the actual net income by the last aforesaid amount. That proof of said error was made to the State Board of Equalization and Assessment, and in explanation thereof, which plaintiff now alleges to be the fact, upon March 15th, A. D. 1922, the principal office building of plaintiff in the City of Chicago, County of Cook, Illinois, was practically destroyed by fire, with a large part of the records, including part of those from which it was necessary to formulate and answer the questions included in the aforesaid forms "G" and "9"; that the data necessary for said information had to be reassembled from the different departments and when so reassembled it developed the error hereinbefore set forth; that said error was not disclosed by the re-assembling of said data until a short time previous to the date of the hearing before the said State Board upon the complaint of this plaintiff for equalization. That notwithstanding said palpable error and the proof thereof before the State Board, which was not controverted, the State Board refused to make any adjustment or equalization of plaintiff's valuation.

That the said several actions of the taxing authorities mentioned denies to plaintiff equal protection of the law, guaranteed by the Fourteenth Amendment to the Constitution of the United States.

XVIII.

Plaintiff further alleges that it has no remedy at law in the premises; that heretofore the Supreme Court of the State of Nebraska, by repeated decisions, has held that a taxpayer whose property is assessed at one hundred per cent or more of its true value, while the property of other taxpayers is valued at only a fraction of true value, has no remedy save and except to use its best endeavors to have the taxing officials raise the valuations of the property of other taxpayers, of which notice must be given, which procedure is futile, and is not an adequate remedy at law.

XIX.

Plaintiff further alleges that it has always been and now is willing to pay its lawful share of the taxes of the state, and in that behalf plaintiff alleges that it is willing and hereby offers to pay to the several county treasurers as soon as said taxes become due and payable to said treasurers all taxes lawfully levied against its property based upon a valuation not exceeding sixty-five per cent upon a valuation of plaintiff's property of $100,000,000, or 0.4745 per cent of the tax on the valuations certified to the several county clerks and the county treasurers by the State Board of Equalization and Assessment for the year 1922, and plaintiff alleges that it will keep said offer
61 good and will pay said taxes when due upon said basis, and will pay all city and village taxes in full.

XX.

Plaintiff further alleges and charges that said unlawful taxes constitute a lien against plaintiff's property and a cloud upon plaintiff's title to said property, that the lien of said taxes against plaintiff's property will unlawfully burden plaintiff in its ability to finance its business as a common carrier of interstate commerce, and cripple, injure and impair the plaintiff in the operation of its line of railroad as a common carrier of interstate commerce. And plaintiff further alleges that the defendant county treasurers, and each of them, will issue numerous distress warrants against the plaintiff and against its property and will cause to be instituted enormous numbers of suits against the plaintiff for the collection of said unlawful and discriminatory taxes unless each of them, their successors, agents, employes and all other persons acting by, through or under their authority or direction be restrained from so doing by order of this court.

Plaintiff further alleges and summarizes:

First. That the action of the State Board of Equalization and Assessment in fixing as the assessed value of the property of this
62 plaintiff the aforesaid sum of $137,589,782.00, or $48,081.42 per mile, is wholly void in that said action is contrary to and in violation of the provisions of Sections 1 and 4 of Article VIII of the Constitution of the State of Nebraska, as hereinbefore set forth, and that said action of said State Board is contrary to the express conditions contained in said provisions of said Constitution and the Laws of said State.

Second. That the said action of the State Board in so fixing the assessment of the property of this plaintiff at the sum of $137,589,782.00 while assessing all other property less than its actual value as hereinbefore alleged, denies to this plaintiff the equal protection of the laws and is, therefore, contrary to the Fifth and Fourteenth Amendments to the Constitution of the United States.

Third. That the action of the State Board while valuing plaintiff's property in considering credits, investments and securities,

which have no relation to the value of its property or the exercise of the rights of plaintiff in the State of Nebraska, is in violation of Sections 1 and 4 of Art. VIII of the Constitution of the State of Nebraska.

Third-B. The action of the State Board in so far as it assesses the real estate of plaintiff situate in the State of Nebraska at greater value than the real estate of citizens and residents of the State is in violation of the third paragraph of the fourth section of the Enabling Act to admit the State of Nebraska into the Union, in that the property of this plaintiff, a citizen of the United States residing without the State of Nebraska, is taxed higher than the property belonging to residents within the State of Nebraska.

Fourth. That by the action of the State Board of Equalization and Assessment in valuing and fixing the assessment of the property of this plaintiff at more than its actual value, as hereinbefore alleged, and all other property at less than its actual value, subjects this plaintiff to penalties and burdens different from and greater than the owners of other property in the State of Nebraska and compels plaintiff to bear an unequal and inequitable and illegal pro-
63 portion of the state, county, school, township and other subdivisions, excepting cities and villages in violation of the Fifth and Fourteenth Amendments to the Federal Constitution.

Fifth. That the actions of the State Board as hereinbefore alleged severally and collectively impose an unusual burden upon and an unwarranted interference with interstate commerce.

Wherefore, as plaintiff is without remedy at and by the rules of the common law, plaintiff prays:

1. That subpœna*ed* in equity forthwith issue for the defendants, and each of them, requiring them to answer to the petition of the plaintiff herein, but not under oath, said oath being hereby expressly waived.

2. Plaintiff further prays the Court to enter an order prescribing the percentage of actual value of plaintiff's property and of the tax levied, which plaintiff shall tender as its tentative tax to the several county treasurers, defendants herein, and for which they shall issue their several receipts excepting city and village tax to be paid in full for the year 1922, pending the final determination of this suit as soon as said taxes shall become due according to law, not exceeding sixty-five per cent of the actual value herein claimed for plaintiff's property.

3. That the Court issue a temporary restraining order enjoining and prohibiting the defendants severally from demanding,
64 collecting or attempting to collect from plaintiff any tax in excess of the portion thereon the Court may fix and determine shall now be paid, other than city and village taxes, and from issuing distress warrants, commencing suit to collect any such excess or the interest thereon or any penalties for the non-payment thereof until the hearing and final judgment of the Court as to the issuance of a temporary injunction herein.

4. Plaintiff further prays the Court to issue its order of temporary injunction against the defendants, and each of them upon due notice as required by law, restraining and enjoining the defendants, and each of them, their employes, agents, successors in office and all persons acting under their authority from carrying out their said purpose to impose upon the plaintiff said unlawful and discriminatory valuations of its property for taxing purposes, and to restrain and enjoin the defendants, and each of them, from collecting any taxes against the plaintiff upon a valuation greater than that to be fixed by the Court, in accordance with the prayer of this petition. From issuing distress warrants, commencing suit, or imposing any penalty for any excess of the amount fixed by this court or interest or costs thereon.

5. Plaintiff further prays that upon final hearing the Court
65 will issue its order of injunction forever restraining and enjoining the defendants, and each of them, and their successors in office, and all persons acting for them, or any of them, from collecting from the plaintiff or against its property taxes in excess of the just and fair valuation of plaintiff's property and in proportion to the valuation of the property of other tax payers as found and fixed by order of this court, and plaintiff further prays the Court for a decree declaring null and void the valuation of plaintiff's property as fixed by the said State Board of Equalization, and as now same appears upon the record of the defendants herein, and discharging plaintiff's property from the pretended lien of said unlawful valuation; and plaintiff prays for such other and further relief in the premises as justice and equity may require. Chicago, Burlington & Quincy Railroad Co., by Byron Clark, Jesse L. Root, J. W. Weingarten, C. W. Krohl, Its Attorneys.

66 STATE OF NEBRASKA,
County of Douglas, ss:

I, R. D. Pollard, being first duly sworn on oath, depose and say that I am the Tax Agent for the Chicago, Burlington & Quincy Railroad Company, a corporation, and have been such in the State of Nebraska for over 30 years that I have read the foregoing Petition in Equity and know the contents thereof, and that the statements and allegations therein contained are true, except as to those made on information and belief, and those I believe to be true. R. D. Pollard.

Subscribed and sworn to before me this 22nd day of November, 1922. H. A. Brown, Notary Public. (Seal.)

R. D. Pollard. This 2nd day of December A. D. 1922.

THE STATE OF NEBRASKA,
County of Lancaster, ss:

Subscribed in my presence and sworn to before me by R. D. Pollard this 2nd day of December, 1922. R. C. Hoyt, Clerk of the

District Court of the United States for the District of Nebraska, By J. H. McClay, Deputy.

Verified as amended this 18 day of Dec. 1922 on pages 26, 33 and 34. R. D. Pollard.

Subscribed and sworn to before me this 18 day of Dec. 1922. R. C. Hoyt, Clerk. (Seal.)

In United States District Court.

MOTION TO DISMISS.

[Filed Dec. 12, 1922.]

Motion of All Defendants Except R. E. Gallagher, County Attorney of Holt County, and J. P. Spearman, County Treasurer of Sarpy County, to Dismiss.

Come now all of the defendants except R. E. Gallagher, county treasurer of Holt County, and J. P. Spearman, county treasurer of Sarpy county, and move the court to dismiss the above entitled cause for the following reasons:

1. Plaintiff had a plain, adequate and complete remedy at law for its protection against all of the alleged acts charged in the petition by means of an error proceeding from the State Board of Equalization and Assessment to the supreme court of the state of Nebraska.

2. There is insufficiency of fact alleged to constitute a valid cause of action in equity against the defendants.

Clarence A. Davis, Attorney General of Nebraska, By Hugh Lamaster, Asst. Atty. Gen'l of Nebraska, Attorneys for Moving Defendants.

In United States District Court.

MOTION TO FILE SUPPLEMENTAL PETITION MAKING PARTIES DEFENDANT NEW COUNTY TREASURERS.

[Filed December 21, 1922.]

Plaintiff comes now and shows to the court that the terms of all of the defendants herein other than the defendant Osborne will expire on Thursday, the 4th day of January, 1923, on which day their successors in office, if qualified, will assume the duties of county treasurer in their respective counties; that part of the defendants county treasurers have been re-elected, and in some instances they will be succeeded by another official elected at the November, 1922, general election in their respective counties. That plaintiff therefore moves the court for permission to file a supplemental petition herein on the 5th day of January, 1923, making party defendants herein

successors in office of all of the county treasurers named as defendants who were not re-elected to said office at the general election in November, 1922, and that unless they voluntarily appear herein that subpœna issue against them to make them party defendants to this action. Chicago, Burlington & Quincy Railroad Company, by Bryon Clark, J. L. Root, J. W. Weingarten, C. W. Krohl, Its Attorneys.

69 In United States District Court.

ORDER FOR SUBSTITUTION.

[Filed December 21, 1922.]

The plaintiff having moved the court for permission to file a supplemental petition on the 5th day of January, 1923, adding as party defendants the successors in office of all those defendant county treasurers in this action who were not re-elected at the November, 1922, term, and the court being well advised in the premises doth sustain said motion.

It is therefore considered by the court that the plaintiff be and hereby is permitted to file a supplemental petition on the 5th day of January, 1923, naming as party defendants in substitution of those county treasurers defendant successors in office of all defendants herein who were not re-elected at the November, 1922, general election, the individuals who were elected, qualified as treasurers in their respective counties, and that if the said substituted defendants do not voluntarily appear to this action, that subpœna issue in conformity to law to advise the pendency of this action, and thereupon unless they show cause to the contrary they shall stand in the place and be subjected to all the burdens and acquire all rights of the party defendants in whose place they will be substituted. By the court: Thos. C. Munger, Judge.

70 SUPPLEMENTAL PETITION.

[Filed January 5, 1923.]

In the District Court of the United States for the District of Nebraska, Lincoln Division.

In Equity.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, Plaintiff,

vs.

W. H. OSBORNE, JR., as State Tax Commissioner of the State of Nebraska; Pearl Woodworth, as County Treasurer, Adams County, Nebraska; David Fletcher, as County Treasurer, Antelope County, Nebraska; Elmer N. Demaray, as County Treasurer, Blaine County, Nebraska; Cora M. Lewis, as County Treasurer, Box Butte County,

Nebraska; Gilbert E. Hasse, as County Treasurer, Buffalo County, Nebraska; Fred E. Ericson, as County Treasurer, Burt County, Nebraska; William D. Miller, as County Treasurer, Butler County, Nebraska; Mia Gering, as County Treasurer, Cass County, Nebraska; Martin Nelson, as County Treasurer, Cedar County, Nebraska; Mrs. Anna B. Grant, as County Treasurer, Chase County, Nebraska; James M. Nelson, as County Treasurer, Cheyenne County, Nebraska; Harry J. Platz, as County Treasurer, Clay County, Nebraska; Joseph Sedlacek, as County Treasurer, Colfax County, Nebraska; Edward L. Cleveland, as County Treasurer, Custer County, Nebraska; Walter E. Miller, as County Treasurer, Dakota County, Nebraska; Belle Quinn, as County Treasurer, Dawes County, Nebraska; Irene Lamma, as County Treasurer, Dawson County, Nebraska; Omar E. Butler, as County Treasurer, Dixon County, Nebraska; Joseph Roberts, as County Treasurer, Dodge County, Nebraska; Otto J. Bauman, as County Treasurer, Douglas County, Nebraska; Freeman K. Fisk, as County Treasurer, Dundy County, Nebraska; Clay Thomas, as County Treasurer, Fillmore County, Nebraska; George A. Carter, as County Treasurer, Franklin County, Nebraska; Geo. W. Wagner, as County Treasurer, Frontier County, Nebraska; James H. Scott, as County Treasurer, Furnas County, Nebraska; Julian A. Barnard, as County Treasurer, Gage County, Nebraska; Frank M. Smith, as County Treasurer, Garfield County, Nebraska; Martin E. Chambers, as County Treasurer, Gosper County, Nebraska; John Haney, as County Treasurer, Grant County, Nebraska; James L. Fitzpatrick, as County Treasurer, Greeley County, Nebraska; Hugo H. Meves, as County Treasurer, Hall County, Nebraska; Harry E. Toof, as County Treasurer, Hamilton County, Nebraska; Jessie Middagh, as County Treasurer, Harlan County, Nebraska; Thomas J. Birchall, as County Treasurer, Hayes County, Nebraska; Robert R. Knowles, as County Treasurer, Hitchcock County, Nebraska; William E. Conklin, as County Treasurer, Holt County, Nebraska; John Kudrna, as County Treasurer, Hooker County, Nebraska; John A. Frandsen, as County Treasurer, Howard County, Nebraska, E. L. Jenkins, as County Treasurer, Jefferson County, Nebraska; James A. Lawrence, as County Treasurer, Johnson County, Nebraska; Jens. H. Jensen, as County Treasurer, Kearney County, Nebraska; Albert E. Sutherland, as County Treasurer, Lancaster County, Nebraska; Sam Souder, as County Treasurer, Lincoln County, Nebraska; Emil Hansen, as County Treasurer, Merrick County, Nebraska; Hazel T. Scoggin, as County Treasurer, Morril County, Nebraska; Harry R. Young, as County Treasurer, Nemaha County, Nebraska; Belle Galley, as County Treasurer, Nuckolls County, Nebraska; David G. McAllister, as County Treasurer, Otoe County, Nebraska; Mark Flanagin, as County Treasurer, Pawnee County, Nebraska; Mary J. Ford, as County Treasurer, Perkins County, Nebraska; Carl Peterson, as County Treasurer, Phelps County, Nebraska; Alfred L. Brande, as County Treasurer, Pierce County,

Nebraska; William L. Boettcher, as County Treasurer, Platte County, Nebraska; John W. Fillman, as County Treasurer, Polk County, Nebraska; Naomi T. Wooton, as County Treasurer, Red Willow County, Nebraska; Fred Brecht, as County Treasurer, Richardson County, Nebraska; Vance Jelinek, as County Treasurer, Saline County, Nebraska; D. S. Fase, as County Treasurer, Sarpy County, Nebraska; George F. Bartek, as County Treasurer, Saunders County, Nebraska; Peter B. Schmidt, as County Treasurer, Scotts Bluff County, Nebraska; Agnes J. Pence, as County Treasurer, Seward County, Nebraska; Clarence S. Marcy, as County Treasurer, Sheridan County, Nebraska; Frank A. Grow, as County Treasurer, Sherman County, Nebraska; Edward B. Lyon, as County Treasurer, Sioux County, Nebraska; Francis Cederholm, as County Treasurer, Thayer County, Nebraska; Chas. E. West, as County Treasurer, Thomas County, Nebraska; Nettie Baker, as County Treasurer, Thurston County, Nebraska; Lafe Paist, as County Treasurer, Valley County, Nebraska; Mrs. Hazel Powell, as County Treasurer, Webster County, Nebraska; T. Edward Wyman, as County, Treasurer, Wheeler County, Nebraska; Frank L. Propst, as County Treasurer, York County, Nebraska, Defendants.

72 Comes now the plaintiff and by leave of court first had and obtained files this its Supplemental Petition, and alleges that since the filing of the original petition in this case a general election has been held in the State of Nebraska. That county treasurers have been elected in all and singular the counties named in the original petition. That in thirty-three of said counties the treasurers were re-elected, and in the remaining thirty-eight counties the treasurers named in the petition either were not candidates for re-election or were defeated for election and their successors in office have been elected. That all and singular the treasurers thus re-elected and elected to fill the positions occupied by defendant treasurers at the time the original petition was filed have qualified and are now the duly elected, acting and qualified treasurers of said counties. That the following named defendants on the 4th day of January, 1923, succeeded themselves as treasurers, to-wit:

Gilbert E. Haase, as County Treasurer, Buffalo County, Nebraska; Fred E. Ericson, as County Treasurer, Burt County, Nebraska; Mrs. Anna B. Grant, as County Treasurer, Chase County, Nebraska; Harry J. Platz, as County Treasurer, Clay County, Nebraska; Joseph Sedlacek, as County Treasurer, Colfax County, Nebraska; Walter E. Miller, as County Treasurer, Dakota County, Nebraska; Irene Lamma, as County Treasurer, Dawson County, Nebraska, Omar E. Butler, as County Treasurer, Dixon County, Nebraska; Joseph Roberts, as County Treasurer, Dodge County, Nebraska; Freeman K. Fisk, as County Treasurer, Dundy County, Nebraska; Geo. W. Wagner, as County Treasurer, Frontier County, Nebraska; James H. Scott, as County Treasurer, Furnas County, Nebraska; Julian A. Bar-
73 nard, as County Treasurer, Gage County, Nebraska; Frank M. Smith, as County Treasurer, Garfield County, Nebraska;

James L. Fitzpatrick, as County Treasurer, Greeley County, Nebraska; Harry E. Toof, as County Treasurer, Hamilton County, Nebraska; Robert R. Knowles, as County Treasurer, Hitchcock County, Nebraska; John A. Frandsen, as County Treasurer, Howard County, Nebraska; E. L. Jenkins, as County Treasurer, Jefferson County, Nebraska; James A. Lawrence, as County Treasurer, Johnson County, Nebraska; Jens H. Jensen, as County Treasurer, Kearney County, Nebraska; Sam Souder, as County Treasurer, Lincoln County, Nebraska; Emil Hansen, as County Treasurer, Merrick County, Nebraska; Belle Galley, as County Treasurer, Nuckolls County, Nebraska; Mark Flanagin, as County Treasurer, Pawnee County, Nebraska; Mary J. Ford, as County Treasurer, Perkins County, Nebraska; Carl Peterson, as County Treasurer, Phelps County, Nebraska; John W. Fillman, as County Treasurer, Polk County, Nebraska; George F. Bartek, as County Treasurer, Saunders County, Nebraska; Agnes J. Pence, as County Treasurer, Seward County, Nebraska; Frank A. Grow, as County Treasurer, Sherman County, Nebraska; Lafe Paist, as County Treasurer, Valley County, Nebraska; Frank L. Propst, as County Treasurer, York County, Nebraska.

That in the remaining counties described in plaintiff's original petition the following named defendants were elected as treasurers and on the 4th day of January, 1923, did qualify and are now occupying their respective offices, to-wit:

Pearl Woodworth, as County Treasurer, Adams County, Nebraska; David Fletcher, as County Treasurer, Antelope County, Nebraska; Elmer N. Demaray, as County Treasurer, Blaine County, Nebraska; Cora M. Lewis, as County Treasurer, Box Butte County, Nebraska; William D. Miller, as County Treasurer, Butler County, Nebraska; Mia Gering, as County Treasurer, Cass County, Nebraska; Martin Nelson, as County Treasurer, Cedar County, Nebraska; James M. Nelson, as County Treasurer, Cheyenne County, Nebraska; Edward L. Cleveland, as County Treasurer Custer County, Nebraska; Belle Quinn, as County Treasurer, Dawes County, Nebraska; Otto J. Bauman, as County Treasurer, Douglas County, Nebraska; Clay Thomas, as County Treasurer, Fillmore County, Nebraska; George A. Carter, as County Treasurer, Franklin County, Nebraska; Martin E. Chambers, as County Treasurer, Gosper County, Nebraska; John Haney, as County Treaturer, Grant County, Nebraska; Hugo H. Meves, as County Treasurer, Hall County, Nebraska; Jessie Middagh, as County Treasurer, Harlan County, Nebraska; Thomas J. Birchall, as County Treasurer, Hayes County, Nebraska; William E. Conklin, as County Treasurer, Holt County, Nebraska; John Kudrna, as County Treasurer, Hooker County, Nebraska; Albert E. Sutherland, as County Treasurer, Lancaster County, Nebraska; Hazel T. Scoggin, as County Treasurer, Morrill County, Nebraska; Harry R. Young, as County Treasurer, Nemaha County, Nebraska; David G. McAllister, as County Treasurer, Otoe County, Nebraska; Alfred L. Brande, as County Treasurer, Pierce County, Nebraska; William L. Boettcher, as County Treasurer, Platte

County, Nebraska; Naomi T. Wooton, as County Treasurer, Red Willow County, Nebraska; Fred Brecht, as County Treasurer, Richardson County, Nebraska; Vance Jelinek, as County Treasurer, Saline County, Nebraska; D. S. Fase, as County Treasurer, Sarpy County, Nebraska; Peter B. Schmidt, as County Treasurer, Scotts Bluff, County, Nebraska; Clarence S. Marcy, as County Treasurer, Sheridan County, Nebraska; Edward B. Lyon, as County Treasurer, Sioux County, Nebraska; Francis Cederholm, as County Treasurer, Thayer County, Nebraska; Chas. E. West, as County Treasurer, Thomas County, Nebraska; Nettie Baker, as County Treasurer, Thurston County, Nebraska; Mrs. Hazel Powell, as County Treasurer, Webster County, Nebraska; T. Edward Wyman, as County Treasurer, Wheeler County, Nebraska.

That the said newly elected treasurers thus filling their first term of office are hereby made defendants in this action in accordance with permission granted by this Honorable Court on the 21st day of December, 1922.

The plaintiff for its cause of action against all and singular the defendants named herein by reference incorporates into this petition all and singular, except with reference to the amount of 1922 tax paid by plaintiff, the allegations contained in the original petition, but also alleges that since the filing of the original petition the county treasurers of Adams County, Box Butte County, Dawes County, Douglas County, Gage County, Harlan County, Pierce County, Blaine County, Sarpy County, Thomas County,
75 Thurston County have accepted without prejudice sixty-five per cent of the taxes levied against plaintiff in 1922 for state, county, school district, township and road district purposes in their respective counties, and have also accepted all terminal taxes levied against the plaintiff in 1922 in their respective counties for the benefit and use of cities and villages therein.

Plaintiff further alleges that it has paid and the county treasurers have accepted all terminal taxes levied against the plaintiff in 1922 for city and village purposes in the counties, to-wit:

Antelope,	Platte,	Red Willow,
Blaine,	Garfield,	Richardson,
Buffalo,	Gosper,	Saline,
Burt,	Holt,	Saunders,
Butler,	Hooker,	Scotts Bluff,
Cass,	Howard,	Seward,
Clay,	Kearney,	Thayer,
Colfax,	Lancaster,	Valley,
Dakota,	Merrick,	Webster,
Dawson,	Nemaha,	York,
Dundy,	Nuckolls,	Grant,
Fillmore,	Otoe,	Wheeler,
Frontier,	Pawnee,	Phelps,
Furnas,	Perkins,	Hitchcock,
Cedar,	Custer,	Jefferson,
Phelps,	Johnson,	Sherman.

Plaintiff further avers that there are no cities or villages situated on the plaintiff's lines of railway in Hayes or Sioux Counties.

Plaintiff further alleges that all of the defendants contend that all of the taxes levied against plaintiff for the year 1922 for every purpose are valid and legal and should be paid and that it is their duty as such county treasurers to collect the same.

That Section 5996, Compiled Statutes of Nebraska, 1922, provides amongst other things that:

"No demand for taxes shall be necessary, but it shall be the duty of every person subject to taxation to attend at the treasurer's office and pay his taxes."

That by Section 6017 it is provided:

"When any corporation doing business in this state shall fail or neglect to pay any tax assessed or charged against it, when the same shall have become delinquent, the county treasurer shall notify any agent or officer of the company in the county where such tax is delinquent that the same is delinquent, and the amount due, and shall further notify the officer or agent to pay over all moneys that may be in his hands, or that may afterwards come into his hands, belonging to such corporation, not exceeding the amount of tax due, to such county treasurer, and if such agent or officer shall fail to pay over the money to the county treasurer, he shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars, nor more than five hundred dollars."

Plaintiff further alleges that taxes assessed against railroad companies become due on the first of November in the year in which they are levied, and delinquent on the first Monday in December of that year.

Plaintiff further alleges that Section 6020, Compiled Statutes of Nebraska, 1922, provides:

"No county or town board, city council or village trustees shall have power to release, discharge, remit or commute any portion of the taxes assessed or levied against any person or property within their respective jurisdictions for any reason whatever."

That Section 4, Article VIII of the Constitution of the State of Nebraska provides:

"The Legislature shall have no power to release or discharge any county, city, township, town or district whatever, or the inhabitants thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, or due any municipal corporations, nor shall commutation for such taxes be authorized in any form whatever."

That Section 6010, Compiled Statutes of Nebraska, 1922, makes it the duty of county treasurers on the first day of February next following the year in which personal taxes may have been levied and yet remain unpaid, to issue distress warrants for collection thereof, and the tax therein described is to be collected by levy and sale of the personal property of the taxpayer as upon execution.

Section 6087, Compiled Statutes of Nebraska, 1922, provides amongst other things that:

"Counties shall have a lien upon real estate within their boundaries for all taxes due thereon to the state, county or any subdivision thereof."

There is no statutory authority in the State of Nebraska for the payment under protest of less than 100 per cent of the tax levied against any taxpayer therein Inless some part of the tax shall
78 have been levied for an unlawful or illegal purpose, nor is there any statute authorizing plaintiff to pay any part of its taxes under protest so that it can recover the part paid under protest by legal proceedings or otherwise.

Plaintiff further alleges that some of the defendants would be willing to accept 65% of the taxes levied against plaintiff in their respective counties for state, county, school district, road district and township purposes and await the determination of this suit in this Court or in any court to which a judgment herein entered might be appealed to determine the legality of the remaining 35%, but they are coerced by the statute, by their bondsmen and the public officials so that unless restrained by the injunctional order of this Court they will before this suit will be finally determined either notify plaintiff's agent or agents in their respective counties of the amount of tax unpaid with demand that all moneys in agent's possession up to the amount of said unpaid tax, whether legal or illegal, be delivered into the treasurer's possession, and plaintiff's agents under fear of fine and prosecution will probably comply with such orders and if the money be thus paid it will be placed in the funds in the hands of the county treasurers and will be paid out in satisfaction of warrants drawn upon the respective funds, and in the event plaintiff shall finally prevail in this action it will have no remedy whereby it can recover back any part of the 35% taxes alleged by plaintiff to be unjust and illegal.

79 Plaintiff has offered to pay to all of the defendant treasurers sixty-five per cent of the taxes levied in those counties against plaintiff for state, county, school district, township, road district and other like purposes, and has sent its checks to said treasurers for that amount of said tax with interest from the first of November up to the time the checks were thus delivered, and that it at all times has stood ready and now stands ready to make such payments good. This plaintiff at all times has been able, ready and willing to pay more than sixty-five per cent of the taxes thus levied against it for state, county, school district, township and road district purposes if in the judgment of the court any greater

amount is lawfully due or should be paid. That it will stand ready at all times to abide the final order of the court with respect thereto or to any interlocutory order this Court may make as a condition precedent to the issuance of an order of injunction from this Court as prayed for in the original petition.

Plaintiff alleges that it is without adequate remedy at law and has no remedy at law whatever except in a court of equity.

Wherefore, as plaintiff is without remedy at and by the rules of the common law, it prays:

1. That subpœnaes in equity forthwith issue for the defendants, to-wit:

80 Pearl Woodworth, as County Treasurer, Adams County, Nebraska; David Fletcher, as County Treasurer, Antelope County, Nebraska; Elmer N. Demaray, as County Treasurer, Blaine County, Nebraska; Cora M. Lewis, as County Treasurer, Box Butte County, Nebraska; William D. Miller, as County Treasurer, Butler County, Nebraska; Mia Gering as County Treasurer, Cass County, Nebraska; Martin Nelson, as County Treasurer, Cedar County, Nebraska; James M. Nelson, as County Treasurer, Cheyenne County, Nebraska; Edward L. Cleveland, as County Treasurer, Custer County, Nebraska; Belle Quinn, as County Treasurer, Dawes County, Nebraska; Otto J. Bauman, as County Treasurer, Douglas County, Nebraska; Clay Thomas, as County Treasurer, Fillmore County, Nebraska; George A. Carter, as County Treasurer, Franklin County, Nebraska Martin E. Chambers, as County Treasurer, Gosper County, Nebraska; John Haney, as County Treasurer, Grant County, Nebraska; Hugo H. Meves, as County Treasurer, Hall County, Nebraska; Jessie Middagh, as County Treasurer, Harlan County, Nebraska; Thomas J. Birchall, as County Treasurer, Hayes County, Nebraska; William E. Conklin, as County Treasurer, Holt County, Nebraska; John Kudrna, as County Treasurer, Hooker County, Nebraska; Albert E. Sutherland, as County Treasurer, Lancaster County, Nebraska; Hazel T. Scoggin, as County Treasurer, Morrill County, Nebraska; Harry R. Young, as County Treasurer, Nemaha County, Nebraska; David G. McAllister, as County Treasurer, Otoe County, Nebraska; Alfred L. Brande, as County Treasurer, Pierce County, Nebraska; William L. Boettcher, as County Treasurer, Platte County, Nebraska; Naomi T. Wootton, as County Treasurer, Red Willow County, Nebraska; Fred Brecht, as County Treasurer, Richardson County, Nebraska; Vance Jelinek, as County Treasurer, Saline County, Nebraska; D. S. Fase, as County Treasurer, Sarpy County, Nebraska; Peter B. Schmidt, as County Treasurer, Scotts Bluff County, Nebraska; Clarence S. Marcy, as County Treasurer, Sheridan County, Nebraska; Edward B. Lyon, as County Treasurer, Sioux County, Nebraska; Francis Cederholm, as County Treasurer, Thayer County, Nebraska; Chas. E. West, as County Treasurer, Thomas County, Nebraska; Nettie Baker, as County Treasurer, Thurston County, Nebraska; Mrs. Hazel Powell, as County Treasurer, Webster County, Nebraska; T. Edward Wyman, as County Treasurer, Wheeler County, Nebraska.

and each of them, requiring them to answer to the original and supplemental petition herein, but not under oath, said oath being hereby expressly waived.

81 2. Plaintiff further prays the Court to enter an order fixing the percentage of the tax levied against plaintiff for all purposes, other than city and village purposes, which it shall tender in all and singular the counties herein described to the several county treasurers, defendants herein, for which they shall issue their several receipts excepting city and village tax which plaintiff shall pay in full for the year 1922. That the percentage of such tax so to be paid pending the final determination of this suit should not exceed 65% of the actual value herein as determined by the State Board of Equalization and Assessment for plaintiff's property.

3. That the Court issue a temporary restraining order enjoining and prohibiting the defendants severally from demanding, collecting or attempting to collect from plaintiff any tax in excess of the portion thereof the Court may fix and determine shall now be paid, other than city and village taxes, and from issuing distress warrants, commencing suit to collect any such excess or the interest thereon or any penalties for the non-payment thereof until the hearing and final judgment of the Court as to the issuance of a temporary injunction herein.

4. Plaintiff further prays the Court to issue its order of temporary injunction against the defendants, and each of them, upon notice as required by law, restraining and enjoining the defendants,

82 and each of them, their employees, agents, successors in office and all persons acting under their authority, from carrying out their said purpose to impose upon the plaintiff said unlawful and discriminatory valuations of its property for taxing purposes, and to restrain and enjoin the defendants, and each of them, from collecting any taxes against the plaintiff upon a valuation greater than that to be fixed by the Court, in accordance with the prayer of this petition. From issuing distress warrants, commencing suit or imposing any penalty for any excess of the amount fixed by this Court or interest or costs thereon.

5. Plaintiff further prays that upon final hearing the Court will issue its order of injunction forever restraining and enjoining the defendants, and each of them, and their successors in office, and all persons acting for them, or any of them, from collecting from the plaintiff or against its property taxes in excess of the just and fair valuation of plaintiff's property and in proportion to the valuation of the property of other tax payers, as found and fixed by order of this Court, and plaintiff further prays the Court for a decree declaring null and void the valuation of plaintiff's property as fixed by the said State Board of Equalization, and as now same appears upon the record of the defendants herein, and discharging plaintiff's property from the pretended lien of said unlawful valuation; and plaintiff prays for such other and further relief in

83 the premises as justice and equity may require. Chicago, Burlington & Quincy Railroad Co., By Byron Clark, J. L. Root, J. W. Weingarten, and C. W. Krohl, Its Attorneys.

ATE OF NEBRASKA,
County of Douglas, ss:

I, R. D. Pollard, being first duly sworn on oath, depose and y that I am the Tax Agent for the Chicago, Burlington & Quincy ilroad Company, a corporation, and have occupied that position the State of Nebraska for over thirty years; that I have read e foregoing Supplemental Petition in Equity and know the con- nts thereof, and that the statements and allegations therein con- ined are true, except as to those made on information and belief, d those I believe to be true. R. D. Pollard.

Subscribed and sworn to before me this 4th day of January, 23. H. A. Brown, Notary Public. (Seal.) (Seal states "Com- ssion expires July 3, 1926.")

STATE OF NEBRASKA,
County of Douglas, ss:

In United States District Court.

AFFIDAVIT OF KATHLEEN EGAN.

[Filed January 5, 1923.]

Kathleen Egan, being first duly sworn deposes and says that she clerk in the Legal Department of the Chicago, Burlington & incy Railroad Company's general offices in Omaha, Nebraska, and at in that capacity on the 29th day of December, 1922, she mailed each of the defendants named in the notice hereto attached and rked Exhibit "A" copy of said notice, which was enclosed and led in an envelope which was addressed one to each of the de- dants and mailed to them at their usual postoffice address, and at upon each envelope there was affixed a four cent United States stage stamp, and each one of the envelopes was placed in the ited States mail. Kathleen Egan.

Subscribed and sworn to in my presence and before me this 3d y of January, 1923. H. A. Brown, Notary Public. (Seal.)

EXHIBIT "A" TO AFFIDAVIT.

In United States District Court.

(Title of Case.)

You and each of you as defendants in the above entitled cause are hereby notified that the Chicago, Burlington & Quincy Railroad Company on the fifth day of January, 1923, will file its Supplemental Petition in the United States District Court for District of Nebraska, Lincoln Division, against you and each of , the object and purpose of said petition is to have declared in-

valid the 1922 assessment by the State Board of Equalization and Assessment in the State of Nebraska of the property of the Chicago, Burlington & Quincy Railroad Company, and to have adjudged that all of said tax in excess of 65% thereof is null and void and that you and each of you be temporarily enjoined during the pendency of this action from collecting any part of the 35% of the tax thus alleged to be illegal, excessive and unjust until the further order of this Court.

You are further notified that on the 10th day of January, 1923, at the hour of nine o'clock, or so soon thereafter as plaintiff can be heard, should the Court refuse to issue said temporary injunction, it will ask that a temporary injunction be issued against you and each of you restraining you from collecting any part of said 35% of said taxes during an appeal which plaintiff will prosecute to the proper appellate court from any adverse ruling made by the special court of three judges who heard the evidence adduced during the hearing heretofore had for a temporary injunction, pending the litigation in the United States District Court for the District of Nebraska, Lincoln Division.

That plaintiff will submit in support of its application the petitions in this case duly verified and evidence by way of affidavit in
86 possession of the official reporter in this case, all of which will be open to your inspection.

You will take due notice and govern yourselves accordingly. Chicago, Burlington & Quincy Railroad Co., By Byron Clark, J. L. Root, J. W. Weingarten, and C. W. Krohl, Its Attorneys.

STATE OF NEBRASKA,
County of Douglas, ss:

In United States District Court.

AFFIDAVIT OF RUTH DETRING.

[Filed January 5, 1923.]

Ruth Detring being first duly sworn deposes and says that she is a clerk in the office of the Legal Department in the Headquarters of the Chicago, Burlington & Quincy Railroad Company in Omaha, Nebraska; that on the 29th day of December, 1922, she sent a printed notice, copy of which is hereto attached and marked Exhibit "A," to the Governor of the State of Nebraska, to Honorable Clarence A. Davis, as Attorney General of the State of Nebraska, and to Honorable Hugh Lamaster, Assistant Attorney General; that these notices were severally sealed in envelopes addressed to the Governor, the Attorney General, and the Assistant Attorney General at Lincoln, Nebraska, and four cents in United States postage was affixed
87 to each envelope, and the same were placed in the United States mails on said day. Ruth Detring.

Subscribed in my presence and sworn to before me this 3d day of January, 1923. H. A. Brown. (Seal.)

(Exhibit "A" attached to this affidavit of Ruth Detring is in words and figures identical with Exhibit "A" attached to and part of the affidavit of Kathleen Egan above set forth, and same is therefore omitted.)

88 That thereafter, on the fifth day of January, 1923, Chancery Subpœna was issued for all of the defendants substituted by said Supplemental Petition, and was thereafter duly served upon each of said defendants, and return thereof showing such service made by the Marshal.

89 In United States District Court.

ORDER DENYING TEMPORARY INJUNCTION.

[Filed January 10, 1923.]

Now on this 10th day of January, A. D., 1923, this cause having heretofore been taken under advisement by the Court on plaintiff's application for a temporary injunction the Court being well advised in the premises, doth find;

That plaintiff for the redress of the wrongs recited in its petition had an adequate remedy at law under the statutes of the state of Nebraska in prosecuting error proceedings to the Supreme Court of the State of Nebraska, and for that reason there is no equity in the application for a temporary injunction.

It is therefore considered by the Court that plaintiff's application for temporary injunction be and hereby is denied.

To all and singular the findings and judgment of the Court plaintiff excepts and its exceptions are hereby allowed. By the Court: Robt. E. Lewis, Circuit Judge. Thos. C. Munger, District Judge. Joseph W. Woodrough, District Judge.

In United States District Court.

PLAINTIFF'S MOTION FOR REHEARING.

[Filed January 10, 1923.]

Comes now the plaintiff in the above entitled cause and most respectfully moves the Court, composed of Honorable Robert E. Lewis, Circuit Judge, Honorable Thomas C. Munger, District Judge, and Honorable Joseph W. Woodrough, District Judge, to set aside its order of January 10th, 1923, refusing to grant plaintiff a temporary injunction, and to grant plaintiff a re-hearing upon its application for a temporary injunction, and to consider the opinion of the Supreme Court of the United States in the case of Sioux City Bridge Company vs. Dakota County, Nebraska, No. 105, October Term, 1922, January 2, 1923, subsequently to the submission of said application.

Plaintiff shows that the Supreme Court of the United States say in said opinion, that the statutes of the State of Nebraska, considered in the light of the rule of the law declared by the Supreme Court of the State of Nebraska, in the said Sioux City Bridge Company case, and in Lincoln Telephone & Telegraph Company vs. Johnson County, 102 Neb. 254, in all those cases where a complaining taxpayer's property has been assessed at one-hundred per cent of its value while other property in the taxing district in the same year is intentionally and systematically assessed at a much lower percentage, "deny the injured taxpayer any remedy at all, because
91 it is utterly impossible for him by any judicial proceedings to secure an increase in the assessment of the great mass of over-assessed property in the taxing district * * *. In substance and effect the decision of the Nebraska Supreme Court in this case upholds the violation of the Fourteenth Amendment, to the injury of the Bridge Company."

Plaintiff most respectfully submits that the decision of the Supreme Court of the United States in the said Sioux City Bridge Company case should induce this Honorable Court to vacate its former order and to grant a re-hearing herein, and to hold that plaintiff was without an adequate remedy at law and to issue a temporary injunction, as prayed in plaintiff's bill. Chicago, Burlington & Quincy Railroad Company, By Byron Clark, Jesse L. Root, Solicitors.

92 In United States District Court.

ORDER OVERRULING APPLICATION TO VACATE ORDER REFUSING TEMPORARY INJUNCTION.

[Filed January 18, 1923.]

This cause coming on to be heard upon the plaintiff's application to vacate the order of this Court entered January 10, 1923, refusing to grant plaintiff a temporary injunction, and the Court being well advised in the premises,

It is ordered that said application be and the same is overruled and denied.

Dated this 11th day of January, A. D. 1923. Robt. E. Lewis, Circuit Judge. J. W. Woodrough, District Judge. Thos. C. Munger, District Judge.

93 In United States District Court.

APPEARANCE OF COUNSEL FOR ALL OF THE DEFENDANTS.

[Filed January 18, 1923.]

Comes now O. S. Spillman, Attorney General of the State of Nebraska, and Hugh Lamaster, Assistant Attorney General for the State of Nebraska, and enter their appearance herein, for all and singular of the defendants.

Dated this 16 day of January, 1923. O. S. Spillman, Attorney General for the State of Nebraska. Hugh Lamaster, Assistant Attorney General for the State of Nebraska.

In United States District Court.

PLAINTIFF'S APPLICATION FOR INJUNCTION PENDING APPEAL.

[Filed January 18, 1923.]

To Honorable Robert E. Lewis, Circuit Judge; Hon. T. C. Munger, District Judge, and J. W. Woodrough, District Judge, presiding:

The plaintiff comes now on this tenth day of January 1923, subsequently to the entering of the Court's order denying plaintiff's prayer for an interlocutory injunction against the defendants pending the trial of this case on its merits and shows to the Court that plaintiff will immediately appeal to the Supreme Court of the United States from this Court's order denying plaintiff's prayer for an interlocutory injunction.

Plaintiff further shows to the Court that thirty-five per cent of the taxes levied against plaintiff's property and the plaintiff upon the valuation made by the State Board of Equalization and Assessment and withheld by plaintiff from payment pending the hearing on plaintiff's prayer for temporary injunction is the sum of $633,-78.38. That plaintiff has always desired and offered to pay such part of its taxes as might be justly and legally due defendants, and plaintiff alleges that under the evidence adduced before this Honorable Court upon the hearing of application for temporary injunction plaintiff does not owe defendants taxes in excess of 55% of the total tax levied upon its property in 1922 but plaintiff says that in its desire to do equity in the premises it offered to pay 65% of those taxes and in some instances defendants have accepted 65% of those taxes pending the outcome of the hearing upon the prayer for the temporary injunction.

Plaintiff further alleges that it is still willing to pay 65% of those taxes pending the outcome of its appeal to the Supreme Court of the United — or whatsoever other sum this Court is of the opinion it should pay pending that appeal.

Plaintiff further shows the Court that notwithstanding an order has been entered denying relief to the plaintiff upon its application for temporary injunction on the ground that plaintiff had an adequate remedy at law by way of error proceedings to the Supreme Court of Nebraska which deprived the Court of jurisdiction to grant plaintiff any relief in the premises, plaintiff most respectfully represents to the Court that said decision was erroneous and plaintiff should have the privilege of testing its validity by appeal to the Supreme Court of the United States and in the meantime be protected against payment to the defendants of that part of its taxes which plaintiff claims, and which proof shows, defendants are not lawfully entitled to collect; and plaintiff further alleges that justice and equity will

be promoted if this Honorable Court will make and enter an order enjoining defendants, pending the appeal, from collecting from plaintiff a greater amount than 65% of those taxes. If the court shall refuse to grant such an order pending appeal, plaintiff
96 will be compelled by distress warrants and other drastic proceedings to pay the whole amount of said taxes to defendants who will disburse the money thus paid and plaintiff will be without any remedy at law or any equity, and furthermore plaintiff's appeal will become moot in the Supreme Court of the United States and plaintiff will be without any remedy whatever for the protection of its rights in the premises.

Plaintiff further alleges that it is solvent and is able, ready and willing to execute a bond in good and sufficient surety in such sum as the Court may direct, fully protecting defendants and the public, so that in the event the Supreme Court of the United States shall hold that the order of this Court denying plaintiff's prayer for an interlocutory injunction was properly entered, the full amount of those taxes may be secured to the defendants and to the public together with interest thereon and the cost of the appeal.

Plaintiff further alleges that the percentage of taxes to be paid to the defendants pending the appeal are believed by plaintiff under the proof not to exceed 55% of the total levy, yet plaintiff desiring to do full equity should the Court be of the opinion that a different percentage of taxes should be paid as a condition precedent to the issuance of an injunction against the collection of the remainder of the taxes pending the appeal plaintiff is willing that the Court
97 shall fix the percentage of taxes which shall be paid as a condition precedent to an injunctional order against the defendants restraining them from collecting the balance of said taxes pending appeal.

Wherefore plaintiff prays that the court will enter an order prescribing and fixing the percentage of taxes above mentioned which shall be forthwith paid to the defendants, if not already paid, as a condition of an injunction against the defendants restraining them from collecting the balance of said taxes pending appeal of the plaintiff to the Supreme Court of the United States.

Plaintiff further prays the Court to enter its order restraining and enjoining the defendants, their officers, agents, employees, successors in office from collecting or attempting to collect from the plaintiff the balance of said taxes other than the percentage *the percentage* the Court shall fix to be paid pending the plaintiff's appeal to the Supreme Court of the United States.

Plaintiff further prays the Court to fix and prescribe the amount of bond which plaintiff shall give as a supersedeas bond to protect the defendants and the public against loss on account of the plaintiff being permitted to withhold such portion of said taxes as the Court shall prescribe until the determination of plaintiff's appeal by the Supreme Court of the United States and for such other relief as justice and equity require in the premises. Byron Clark, J. L.
98 Root, J. W. Weingarten, and C. W. Krohl, Attorneys for Plaintiff.

STATE OF NEBRASKA,
County of Douglas, ss:

J. L. Root, being first duly sworn deposes and says that he is one of the solicitors for the plaintiff in the above entitled cause; that he personally presented the petition and the proof upon the application for a temporary injunction pending trial of the case on its merits in the District Court and is familiar with the pleadings and the evidence in this case; that he has read the foregoing application which was prepared by him personally; that he believes said application to be true and that justice and equity will be promoted by the Court granting the order of injunction and the other things in said application prayed for; that the appeal in this case is taken in good faith and not for the purpose of delay and will be prosecuted speedily and the cause brought to a final determination with all reasonable dispatch. Jesse L. Root.

Subscribed and sworn to before me this 10" day of January, 1923. H. A. Brown, Notary Public. (Seal.)

In United States District Court.

PLAINTIFF'S PETITION FOR APPEAL AND ORDER ALLOWING SAME.

[Filed January 18, 1923.]

The above named complainant, Chicago, Burlington & Quincy Railroad Company, conceiving itself aggrieved by the order entered on the 10th day of January, 1923, in the above entitled proceeding, overruling complainant's application for a preliminary injunction pending the trial of this case on its merits, doth hereby appeal from said order to the Supreme Court of the United States, and prays that this, its appeal, may be allowed; and that a transcript of the records and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States. Byron Clark, Jesse L. Root, J. W. Weingarten, and C. W. Krohl, Attorneys for Plaintiff and Appellant, 1004 Farnam Street, Omaha, Nebraska.

Lincoln, Nebraska, January 16th, 1923.

And now, on this day, it was ordered that the appeal be allowed as prayed for provided complainant shall give a bond to the State of Nebraska for the use of the defendants all and singular, and their successors in office, in the penal sum of Four Hundred Fifty Thousand Dollars ($450,000.00), conditioned that complainant shall prosecute its appeal to effect without unnecessary delay, and if defeated on its appeal, will pay to the defendant county treasurers, or their successors in office, the taxes levied against complainant in Nebraska, for 1922, as this court shall finally adjudicate to be due, together with penalties, interest, damages, and costs, as ascertained by this court, and shall pay all damages to any person who shall suffer by this appeal. Bond may be approved by District

Judge Munger. Robt. E. Lewis, Circuit Judge. Thos. C. Munger, District Judge. J. W. Woodrough, District Judge.

101 In United States District Court.

PLAINTIFF'S ASSIGNMENT OF ERRORS.

[Filed January 18, 1923.]

Assignment of Errors.

Now comes the plaintiff in the above entitled cause, by its solicitors, and in connection with its petition for appeal to the United States Supreme Court from the Order of said District Court, entered January 10, 1923, denying plaintiff's application for an interlocutory injunction in the above entitled cause, files the following assignment of errors upon which plaintiff will rely on said appeal:

The District Court erred:

1. In holding and adjudging that the plaintiff had an adequate remedy at law in the premises under the statutes and laws of the State of Nebraska.

2. In holding and adjudging that said Court was without jurisdiction in the premises by reason of supposed adequate remedy at law under the laws and statutes of the State of Nebraska, because the remedy at law which would defeat the jurisdiction of the Court in the premises must be a plain, adequate and complete remedy at law in the Federal Court, and no such remedy exists.

3. In denying the application of the above named plaintiff for an interlocutory injunction restraining the defendant tax officials of the State of Nebraska from imposing upon the plaintiff excessive, unequal, unlawful and discriminatory valuation of its property for taxation purposes, as set forth in plaintiff's petition.

102 4. In not granting the application of the above named plaintiff for an interlocutory injunction restraining the defendant tax officials of the State of Nebraska from imposing upon the plaintiff excessive, unequal, unlawful and discriminatory valuation of its property for taxation purposes, as set forth in plaintiff's petition.

5. In denying the application of the above named plaintiff for an interlocutory injunction restraining the defendant tax officials of the State of Nebraska from collecting any taxes against the plaintiff upon a valuation of plaintiff's property greater than that to be fixed by the Court, in accordance with the prayer of the petition.

6. In finding that for the redress of the wrongs recited in its petition, plaintiff had an adequate remedy at law under the statutes of the State of Nebraska in prosecuting error proceedings to the Supreme Court of the State of Nebraska.

7. In finding that plaintiff had an adequate remedy at law under the statutes of the State of Nebraska and for that reason there was no equity in plaintiff's application for an interlocutory injunction.

8. In finding that plaintiff had an adequate remedy under the statutes of the State of Nebraska to correct the unconstitutional dis-

crimination against the plaintiff effected by the intentional and systematic inequality of assessment, whereby plaintiff's property was assessed at more than 100% of its actual value and other property assessed at not to exceed 65% of its actual value.

9. In holding that the uncertain, doubtful and obscure provisions of the laws of Nebraska with reference to error proceedings, afforded plaintiff a plain, adequate and complete remedy for the correction of said unlawful and unconstitutional inequality of assessment.

10. In refusing to enjoin the defendant tax officials of the State of Nebraska from levying and collecting from plaintiff taxes based upon an intentional and systematic inequality of assessment, whereby plaintiff's property was assessed in excess of its actual value and other property was systematically and intentionally assessed at less than its actual value, in violation of the plaintiff's right to equal protection of the laws under the Constitution and laws of the State of Nebraska and the Fourteenth Amendment to the Constitution of the United States and the provisions of the Enabling Act of the Congress of the United States under which the State of Nebraska was admitted into the Union.

11. In refusing to enjoin the defendant tax officials of the State of Nebraska from levying and collecting taxes from plaintiff based upon a greater percentage of the actual value of plaintiff's property than the percentage of actual value at which all other property was intentionally and systematically underassessed.

12. In refusing to enjoin the defendant tax officials of the State of Nebraska from levying and collecting taxes based on an assessment of plaintiff's property at more than its actual value when all other property in the State of Nebraska, except railroads, was intentionally and systematically assessed at less than its actual value, because said unequal and discriminatory method of assessment deprives plaintiff of its property for public use without just compensation, and without due process of law, and denies to plaintiff the equal protection of the laws, guaranteed by the Constitution of the State of Nebraska, and the Fourteenth Amendment to the Constitution of the United States, and imposes unlawful burdens upon interstate commerce in violation of Par. 3, Sec. 8, of Art. I, the commerce clause, of the Constitution of the United States.

13. In not holding and adjudging that the valuation of plaintiff's property for taxation purposes at more than 100% of its actual value, and the intentional and systematic under-valuation of all other property in the State of Nebraska at not to exceed 65% of its value, and the unlawful assessment and levy of taxes upon plaintiff's property upon said discriminatory valuation was a denial to the plaintiff of the equal protection of the laws guaranteed by the Constitution of the State of Nebraska and the Fourteenth Amendment to the Constitution of the United States.

14. In denying the application of the plaintiff for an interlocutory injunction herein, because the plaintiff is wholly without remedy in the premises, except through the injunction and decree of said Court.

105 Wherefore, the plaintiff prays that the said Order or Decree of said District Court, entered January 10, 1923, denying the application of the plaintiff for an interlocutory injunction, be reversed, annulled and set aside, with directions that the application be granted, and for such other and further Order as may be appropriate. Byron Clark, Jesse L. Root, J. W. Weingarten, Solicitors for Plaintiff.

106 In United States District Court.

ORDER ALLOWING INTERLOCUTORY INJUNCTION PENDING APPEAL.

[Filed January 18, 1923.]

Now on this 10th day of January, 1923, the court of three judges, to-wit: Honorable Robert E. Lewis, Circuit Judge, Honorable Thomas C. Munger, District Judge, and Honorable J. W. Woodrough, District Judge, having heretofore entered its order denying plaintiff's application for an interlocutory injunction in this cause pending a trial on its merits in the district court, on the ground that plaintiff had an adequate remedy at law by way of error proceedings to the Supreme Court of the state of Nebraska, and plaintiff having given notice of its intention to appeal to the Supreme Court of the United States from said order, and having presented its application for an order fixing the percentage of taxes it should pay to the defendants as their interests may appear pending plaintiff's appeal to the Supreme Court of the United States, and prescribing the amount of bond plaintiff shall give as a condition for the court granting an order of injunction restraining and enjoining the defendants from collecting the balance of said taxes pending the determination of said appeal, and the Court being well advised in the premises finds that should the plaintiff perfect its appeal without an order restraining the defendant treasurers from collecting all of the taxes in contention, the defendants could avail themselves of the statutory proceedings of the state of Nebraska and compel plaintiff to pay
107 all those taxes, whereby its contentions on appeal might become moot and the money disbursed making it doubtful whether any part of such taxes could be recovered, and the Court being of the opinion that defendants cannot be harmed and the rights of the plaintiff would be promoted by having an opportunity to present its appeal to the Supreme Court of the United States, and that it would be just and equitable to issue said order,

It is by the court therefore ordered and decreed That plaintiff shall pay, or offer to pay, at the time payment of taxes is required to be made, to the defendant county treasurers, or their successors in office, as their respective interests may appear, 75 per cent of the total tax levied in their respective counties against plaintiff for state, county, school district, township, road district, and other like purposes, and that pending the determination of plaintiff's appeal by the Supreme Court of the United States, and until the further order of this court the defendants, their officers, agents and successors in office, be and

they hereby are restrained and enjoined from collecting or attempting to collect from plaintiff any part of the taxes so as aforesaid levied for 1922 in excess of 75 per cent of the total levy, in all those counties where the total amount of tax levied against plaintiff in 1922 is over Three Thousand Dollars, exclusive of interest.

108 It is further ordered That plaintiff shall execute a bond in favor of the state of Nebraska for the use of the defendants, and each of them, and their successors in office, and each of them, in the penal sum of $450,000.00 Dollars according to this order, which bond may be approved by the Honorable Thomas C. Munger, District Judge. Robt. E. Lewis, Circuit Judge. J. W. Woodrough, District Judge. Thos. C. Munger, District Judge.

109 In United States District Court.

BOND TO SECURE PRELIMINARY INJUNCTION.

[Filed January 18, 1923.]

Know all men by these presents that we, Chicago, Burlington & Quincy Railroad Company, as principal, and United States Fidelity & Guaranty Company, as surety, are hereby held and firmly bound unto the State of Nebraska for the use of the defendants, all and singular and their successors in office all and singular, in the penal sum of four hundred fifty thousand dollars ($450,000.00) for the payment of which, well and truly to be made, we hereby bind ourselves jointly and severally, firmly by these presents, subject to the following conditions:

Whereas, in this action on the 10th day of January, 1923, after the court refused to issue a preliminary injunction restraining the defendants, and their successors in office, and those acting by or through them, from collecting to exceed sixty-five (65%) per cent of the taxes assessed against complainant's property in the state of Nebraska for all purposes other than city and village purposes, the court upon complainant's application entered an order restraining the defendants, all and singular, their successors in office, all and singular, and all persons acting by or through the defendants, all and singular, from collecting or attempting to collect from said complainant any portion of the taxes, other than for city and village purposes assessed against it and its property in 1922 in excess of seventy-five per cent of that tax in all those counties where

110 the total amount of tax levied against complainant in 1922 was over Three Thousand Dollars exclusive of interest, but conditioned that complainant should execute a bond in favor of the state of Nebraska for the use of the defendants, and each of them, and their successors in office, and each of them, in the penal sum of Four Hundred Fifty Thousand Dollars, conditioned that complainant shall pay or tender to the several county treasurers, defendants herein, or their successors in office, seventy-five per cent of its taxes in Nebraska with legal interest thereon, other than the taxes for city

and village purposes, and, if the defendants, or any of them, should prevail upon the appeal to the Supreme Court of the United States, complainant should pay with lawful interest all that part of its taxes found by the court in this action to be just and legal over and above seventy-five per cent to be paid at the present time.

Now, therefore, the condition of this obligation is such that, if complainant shall prosecute its appeal to effect and without unnecessary delay and if, upon the final determination of said appeal it shall be found that said preliminary injunction was wrongfully or improperly issued, the said Chicago, Burlington & Quincy Railroad Company shall pay all costs taxed against it and all damages that may have been suffered by any person on account of the issuance of this order, and shall pay to the several defendant county
111 treasurers or their successors in office the amounts of the taxes levied in Nebraska for the year 1922 as the court shall finally adjudicate to be due, together with legal interest and penalties thereon as provided by law, all such taxes, interest, penalties, damages and costs to be ascertained by this court in this action, then this obligation to be null and void, otherwise to be and remain in full force and effect.

Dated this 16th day of January, 1923. Chicago, Burlington & Quincy Railroad Company, Principal, By Jesse L. Root, Its Attorney. United States Fidelity & Guaranty Company, Surety, By R. K. Barton, Its Attorney in Fact. (Seal.)

The above bond has been approved as to form and surety and filed this 16th day of Jany., 1923. Thos. C. Munger, District Judge.

112 In United States District Court.

PRÆCIPE FOR TRANSCRIPT AND STIPULATION.

[Filed February 7, 1923.]

The Clerk of said District Court is here requested to prepare a transcript of the record in the above entitled cause and file the same in the office of the Clerk of the Supreme Court of the United States, at the City of Washington, District of Columbia, as required by the rules of this Court, and the said Court of Appeals, and include in said transcript, pleadings, proceedings, and papers on file and of record in his office appertaining to said cause, enumerated as follows, to-wit:

1. Petition in Equity.
2. Motion of all defendants except R. E. Gallagher, County Attorney of Holt County, and J. P. Spearman, County Treasurer of Sarpy County, to dismiss.
3. Motion to file Supplemental Petition making parties defendant new County Treasurers.
4. Order filed December 21, 1922.

5. Supplemental Petition.
6. Affidavit of Kathleen Egan.
7. Affidavit of Ruth Detring.
8. Memo of Chancery Subpœna issued, service and return.
9. Order denying temporary injunction.
10. Plaintiff's motion for rehearing on application for preliminary injunction pending trial.
11. Order overruling application to vacate order refusing temporary injunction.
12. Appearance of counsel for all defendants.
13. Plaintiff's application for injunction pending appeal.
113 14. Plaintiff's Petition for Appeal with Order thereon.
15. Plaintiff's assignment of errors.
16. Order of court allowing interlocutory injunction pending appeal.
17. Bond to secure preliminary injunction.
18. Original citation and acceptance of service.
19. Præcipe for Transcript and stipulation in regard thereto.
20. Condensed statement of the evidence allowed and settled by the court and filed on the 7 day of February, 1923.
21. Stipulation as to printing the record.
22. Clerk's certificate.

Said transcript to be prepared as required by the rules of the Supreme Court of the United States, and file the same with the Clerk of said Court at Washington, District of Columbia, on or before the 15th day of February, 1923. Byron Clark, Jesse L. Root, J. W. Weingarten, Attorneys for Appellant.

Receipt of a copy of the foregoing præcipe for transcript of the record is here acknowledged.

Dated February 1st, 1923. O. S. Spillman, Attorney General of Nebraska; Hugh Lamaster, Asst. Attorney General, Attorneys for Appellees.

114 STIPULATION.

[Filed February 7, 1923.]

It is here stipulated and agreed by and between parties hereto that the foregoing præcipe for a Transcript of the Record on Appeal to the Supreme Court of the United States, enumerates all of the record and proceedings had in said cause necessary to be included in said transcript. Byron Clark, Jesse L. Root, J. W. Weingarten, Attorneys for Appellant. O. S. Spillman, Attorney General of Nebraska; Hugh Lamaster, Asst. — General of Nebraska, Attorneys for Appellees.

115 In United States District Court.

STIPULATION AS TO PRINTING THE RECORD.

[Filed February 7, 1923.]

It is here stipulated and agreed by and between parties hereto, that printing of the record as provided by an Act of Congress entitled "An Act to diminish the expense of proceedings on appeal and writ of error or certiorari," approved February 13, 1911, is here waived and election made to take and file a transcript of the record in the Supreme Court of the United States, there to be printed under the supervision of the Clerk in accordance with the rules and practice of said Supreme Court.

Dated this 1st day of February, 1923. Byron Clark, Jesse L. Root, J. W. Weingarten, C. W. Krohl, Attorneys for Appellant. O. S. Spillman, Attorney General of Nebraska; Hugh Lamaster, Asst. Attorney General, Attorneys for Appellees.

116 [File endorsement omitted.]

CITATION & SERVICE.

[Filed Jan. 18, 1923.]

Dist. Court U. S. for Dist. of Neb., Lincoln Div.

In Equity No. 181.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, Plaintiff and Appellant,

vs.

W. H. OSBORNE, as Tax Commissioner of Nebraska, et al., Defendants and Appellees.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

To W. H. Osborne, as Tax Commissioner of the State of Nebraska, and Gilbert E. Haase, as County Treasurer, Buffalo County, Nebraska; Fred E. Ericson, as County Treasurer, Burt County, Nebraska; Mrs. Anna B. Grant, as County Treasurer, Chase County, Nebraska; Harry J. Platz, as County Treasurer, Clay County, Nebraska; Joseph Sedlacek, as County Treasurer, Colfax County, Nebraska; Walter E. Miller, as County Treasurer, Dakota County, Nebraska; Irene Lamma, as County Treasurer, Dawson County, Nebraska; Omar E. Butler, as County Treasurer, Dixon County Nebraska; Joseph Roberts, as County Treasurer, Dodge

County, Nebraska; Freeman K. Fisk, as County Treasurer, Dundy County, Nebraska; Geo. W. Wagner, as County Treasurer, Frontier County, Nebraska; James H. Scott, as County Treasurer, Furnas County, Nebraska; Julian A. Barnard, as County Treasurer, Gage County, Nebraska; Frank M. Smith, as County Treasurer, Garfield County, Nebraska; James L. Fitzpatrick, as County Treasurer, Greeley County, Nebraska; Harry E. Toof, as County Treasurer, Hamilton County, Nebraska; Robert R. Knowles, as County Treasurer, Hitchcock County, Nebraska; John A. Frandsen, as County Treasurer, Howard County, Nebraska; E. L. Jenkins, as County Treasurer, Jefferson County, Nebraska; James A. Lawrence, as County Treasurer, Johnson County, Nebraska; Jens H. Jensen, as County Treasurer, Kearney County, Nebraska; Sam Souder, as County Treasurer, Lincoln County, Nebraska; Emil Hansen, as County Treasurer, Merrick County, Nebraska; Belle Galley, as County Treasurer, Nuckolls County, Nebraska; Mark Flanagin, as County Treasurer, Pawnee County, Nebraska; Mary J. Ford, as County Treasurer, Perkins County, Nebraska; Carl Peterson, as County Treasurer, Phelps County, Nebraska; John W. Fillman, as County Treasurer, Polk County, Nebraska; George F. Bartek, as County Treasurer, Saunders County, Nebraska; Agnes J. Pence, as County Treasurer, Seward County, Nebraska; Frank A. Grow, as County Treasurer, Sherman County, Nebraska; Lafe Paist, as County Treasurer, Valley County, Nebraska; Frank L. Propst, as County Treasurer, York County, Nebraska; Pearl Woodworth, as County Treasurer, Adams County, Nebraska; Davis Fletcher, as County Treasurer, Antelope County, Nebraska; Elmer N. Demaray, as County Treasurer, Blaine County, Nebraska; Cora M. Lewis, as County Treasurer, Box Butte County, Nebraska; William D. Miller, as County Treasurer, Butler County, Nebraska; Mia Gering, as County Treasurer, Cass County, Nebraska; Martin Nelson, as County Treasurer, Cedar County, Nebraska; James M. Nelson, County Treasurer, Cheyenne County, Nebraska; Edward L. Cleveland, as County Treasurer, Custer County, Nebraska; Belle Quinn, as County Treasurer, Dawes County, Nebraska; Otto J. Bauman, as County Treasurer, Douglas County, Nebraska; Clay Thomas, as County Treasurer, Fillmore County, Nebraska; George A. Carter, as County Treasurer, Franklin County, Nebraska; Martin E. Chambers, as County Treasurer, Gosper County, Nebraska; John Haney, as County Treasurer, Grant County, Nebraska; Hugo H. Meves, as County Treasurer, Hall County, Nebraska; Jessie Middagh, as County Treasurer, Harlan County, Nebraska; Thomas J. Birchall, as County Treasurer, Hayes County, Nebraska; William E. Conklin, as County Treasurer, Holt County, Nebraska; John Kudrna, as County Treasurer, Hooker County, Nebraska; Albert E. Sutherland, as County Treasurer, Lancaster County, Nebraska; Hazel T. Scoggin, as County Treasurer, Morrill County, Nebraska; Harry R. Young, as County Treasurer, Nemaha County, Nebraska; David G. McAllister, as County Treasurer, Otoe County, Nebraska; Alfred L. Brande, as County Treasurer, Pierce County,

Nebraska; William L. Boettcher, as County Treasurer, Platte County, Nebraska; Naomi T. Wootton, as County Treasurer, Red Willow County, Nebraska; Fred Brecht, as County Treasurer, Richardson County, Nebraska; Vance Jelinek, as County Treasurer, Saline County, Nebraska; D. S. Fase, as County Treasurer, Sarpy County, Nebraska; Peter B. Schmidt, as County Treasurer, Scotts Bluff County, Nebraska; Clarence S. Marcy, as County Treasurer, Sheridan County, Nebraska; Edward B. Lyon, as County Treasurer, Sioux County, Nebraska; Francis Cederholm, as County Treasurer, Thayer County, Nebraska; Chas. E. West, as County Treasurer, Thomas County, Nebraska; Nettie Baker, as County Treasurer, Thurston County, Nebraska; Mrs. Hazel Powell, as County Treasurer, Webster County, Nebraska; T. Edward Wyman, as County Treasurer, Wheeler County, Nebraska,
117 Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, to be holden at Washington on the 15th day of February, 1923, pursuant to an appeal filed in the Clerk's office of the district Court of the United States for the District of Nebraska, Lincoln Division, wherein Chicago, Burlington & Quincy Railroad Company is appellant and W. H. Osborne, Jr., as State Tax Commissioner of the State of Nebraska; Gilbert E. Haase, as County Treasurer, Buffalo County, Nebraska; Fred E. Ericson, as County Treasurer, Burt County, Nebraska; Mrs. Anna B. Grant, as County Treasurer, Chase County, Nebraska; Harry J. Platz, as County Treasurer, Clay County, Nebraska; Joseph Sedlacek, as County Treasurer, Colfax County, Nebraska; Walter E. Miller, as County Treasurer, Dakota County, Nebraska; Irene Lamma, as County Treasurer, Dawson County, Nebraska; Omar E. Butler, as County Treasurer, Dixon County, Nebraska; Joseph Roberts, as County Treasurer, Dodge County, Nebraska; Freeman K. Fisk, as County Treasurer, Dundy County, Nebraska; Geo. W. Wagner, as County Treasurer, Frontier County, Nebraska; James H. Scott, as County Treasurer, Furnas County, Nebraska; Julian A. Barnard, as County Treasurer, Gage County, Nebraska; Frank M. Smith, as County Treasurer, Garfield County, Nebraska; James L. Fitzpatrick, as County Treasurer, Greeley County, Nebraska; Harry E. Toof, as County Treasurer, Hamilton County, Nebraska; Robert R. Knowles, as County Treasurer, Hitchcock County, Nebraska; John A. Frandsen, as County Treasurer, Howard County, Nebraska; E. L. Jenkins, as County Treasurer, Jefferson County, Nebraska; James A. Lawrence, as County Treasurer, Johnson County, Nebraska; Jens H. Jensen, as County Treasurer, Kearney County, Nebraska; Sam Souder, as County Treasurer, Lincoln County, Nebraska; Emil Hansen, as County Treasurer, Merrick County; Nebraska; Belle Galley, as County Treasurer, Nuckolls County, Nebraska; Mark Flanagin, as County Treasurer, Pawnee County, Nebraska; Mary J. Ford, as County Treasurer, Perkins County, Nebraska; Carl Peterson, as County Treasurer, Phelps County, Nebraska; John W. Fillman, as County Treasurer, Polk County, Nebraska; George F. Bartek, as

County Treasurer, Saunders County, Nebraska; Agnes J. Pence, as County Treasurer, Seward County, Nebraska; Frank A. Grow, as County Treasurer, Sherman County, Nebraska; Lafe Paist, as County Treasurer, Valley County, Nebraska; Frank L. Propst, as County Treasurer, York County, Nebraska; Pearl Woodworth, as County Treasurer, Adams County, Nebraska; David Fletcher, as County Treasurer, Antelope County, Nebraska; Elmer N. Demaray, as County Treasurer, Blaine County, Nebraska; Cora M. Lewis, as County Treasurer, Box Butte County, Nebraska; William D. Miller, as County Treasurer, Butler County, Nebraska; Mia Gering, as County Treasurer, Cass County, Nebraska; Martin Nelson, as County Treasurer, Cedar County, Nebraska; James M. Nelson, as County Treasurer, Cheyenne County, Nebraska; Edward L. Cleveland, as County Treasurer, Custer County, Nebraska; Belle Quinn, as County Treasurer, Dawes County, Nebraska; Otto J. Bauman, as County Treasurer, Douglas County, Nebraska; Clay Thomas, as County Treasurer, Fillmore County, Nebraska; George A. Carter, as County Treasurer, Franklin County, Nebraska; Martin E. Chambers, as County Treasurer, Gosper County, Nebraska; John Haney, as County Treasurer, Grant County, Nebraska; Hugo H. Meves, as County Treasurer, Hall County, Nebraska; Jessie Middagh, as County Treasurer, Harlan County, Nebraska; Thomas J. Birchall, as County Treasurer, Hayes County, Nebraska; William E. Conklin, as County Treasurer, Holt County, Nebraska; John Kudrna, as County Treasurer, Hooker County, Nebraska; Albert E. Sutherland, as County Treasurer, Lancaster County, Nebraska; Hazel T. Scoggin, as County Treasurer, Morrill County, Nebraska; Harry R. Young, as County Treasurer, Nemaha County, Nebraska; David G. McAllister, as County
118 Treasurer, Otoe County, Nebraska; Alfred L. Brande, as County Treasurer, Pierce County, Nebraska; William L. Pettcher, as County Treasurer, Platte County, Nebraska; Naomi T. Cotton, as County Treasurer, Red Willow County, Nebraska; Fred Specht, as County Treasurer, Richardson County, Nebraska; Vance Polinek, as County Treasurer, Saline County, Nebraska; D. S. Fase, as County Treasurer, Sarpy County, Nebraska; Peter B. Schmidt, as County Treasurer, Scotts Bluff County, Nebraska; Clarence S. Harey, as County Treasurer, Sheridan County, Nebraska; Edward B. Lyon, as County Treasurer, Sioux County, Nebraska; Francis Cederholm, as County Treasurer, Thayer County, Nebraska; Chas. E. West, as County Treasurer, Thomas County, Nebraska; Nettie Baker, as County Treasurer, Thurston County, Nebraska; Mrs. Hazel Powell, as County Treasurer, Webster County, Nebraska; T. Edward Wyman, as County Treasurer, Wheeler County, Nebraska, are respondents, to show cause, if any there be, why the order and decree in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Thomas C. Munger, United States District Judge this 16th day of January, in the Year of our Lord, One Thousand Nine Hundred Twenty Three. Thos. C. Munger, Judge.

129 [File endorsement omitted.]

120 & 121 In the United States District Court for the District of Nebraska, Lincoln Division.

[Title omitted.]

Due service of all and singular the defendants in this case of the citation issued on plaintiff's appeal to the Supreme Court of the United States is hereby acknowledged and accepted. O. S. Spillman, Atty. Gen. of Neb.; Hugh Lamaster, Asst. Atty. Gen., Solicitors for the defendants. Dated January 18, 1923.

122 In the District Court of the United States for the District of Nebraska, Lincoln Division.

[Title omitted.]

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Cause before a special court composed of the Honorable Robert E. Lewis, Circuit Judge Eighth Circuit; Honorable Thomas C. Munger, District Judge of the United States District Court for the District of Nebraska, and Honorable Joseph W. Woodrough, District Judge of the United States District Court for the District of Nebraska, sitting in the District Court of the United States for the District of Nebraska, within the Eighth Judicial Circuit, at the October, 1922, term thereof.

[Title omitted.]

Bruce Scott, of Chicago; Byron Clark, Jesse L. Root, J. W. Weingarten, C. W. Krohl, all of Omaha, Attorneys for Plaintiff.

Clarence A. Davis, of Lincoln, Attorney General for the State of Nebraska; Hugh Lamaster, of Lincoln, Deputy Attorney General

for the State of Nebraska, Attorneys for all and singular the defendants other than J. P. Spearman as County Treasurer of Sarpy County, Nebraska.

E. S. Nickerson, of Papillion, County Attorney of Sarpy County, Nebraska, Attorney for J. P. Spearman, as County Treasurer of Sarpy County, Nebraska.

133 In the District Court of the United States for the District of Nebraska, Lincoln Division.

[Title omitted.]

NOTICE.

To the above-named defendants and their counsel:

We hand you, annexed hereto, for examination and suggestions of amendments, a condensed statement of the evidence in the above entitled cause material to the questions involved in the appeal taken by Chicago, Burlington & Quincy Railroad Company, a corporation, plaintiff, from the order entered in said court therein, three Judges presiding, Hon. Robert E. Lewis, Circuit Judge of the Eighth Judicial Circuit, Hon. Thomas E. Munger, United States District Judge for the District of Nebraska, and Hon. Joseph W. Woodrough, United States District Judge for the District of Nebraska, on the 10th day of January, 1923, in favor of the defendants, in-
134 cluding the successors in office of those defendant County Treasurers whose terms expired January 4th, 1923 and who were not re-elected but who have been duly made parties hereto, denying and overruling that part of the prayer in plaintiff's petition requesting the court to issue its order of temporary injunction herein against the defendants in this action, and each of them, their employes, agents, successors in office, and all persons acting under their authority, from carrying out their alleged purpose to impose upon plaintiff unlawful and discriminatory valuations of its property for taxing purposes and restraining and enjoining the defendants, and each of them, and their successors in office, from collecting taxes against the plaintiff for 1922 taxation upon a valuation greater than that to be fixed by the court, in accordance with the prayer of the petition, and from issuing distress warrants, commencing suit or imposing any penalty for any excess of the amount fixed by the court, or from collecting interest or costs thereon; and that the court, in that temporary order of injunction so requested, should prescribe the percentage of the actual value of plaintiff's property and of the tax levied which plaintiff should tender as its tentative tax to the several County Treasurers defendants, and for which they should issue their several receipts, excepting for city and village tax which was to be paid in full, for the year 1922, pending the final determination of this suit; and that the court tem-
135 porarily restrain and enjoin and prohibit the defendants severally from demanding, collecting or attempting to collect

from plaintiff any tax for 1922 in excess of the portion thereof the court might fix and determine should be presently paid until the hearing and final judgment of the court herein; and from the finding and order of the said three judges presiding that for all the grievances stated in plaintiff's petition it had an adequate remedy at law by prosecuting error proceedings to the Supreme Court of the State of Nebraska. This statement contains also the oral opinions of the Judges from the bench in this cause, and all the proceedings during the hearing on the application for the temporary injunction.

This we will hereafter present to the said three Judges, or to two of them, who heard said cause, for allowance, approval and settlement as such, with which we will, by præcipe, request the Clerk to include plaintiff's application for a temporary injunction restraining the defendant's Treasurers, their successors in office, and their representatives from paying and collecting or attempting to collect any of the aforesaid tax in excess of the sum of 65% thereof, or such other sum as the court might fix pending the appeal from the orders first hereinabove recited to the Supreme Court of the United States, and during the pendency of the appeal therein, together with the court's order upon said application and plaintiff's bond to make the said order effective; also, to include the petition for appeal and assignments of error, the order allowing said appeal, the citation and acceptance of service and the appeal bond. Dated this 23rd day of January, 1923. Bruce Scott, Byron Clark, Jesse L. Root, J. W. Weingarten, C. W. Krohl, Attorneys for Plaintiff.

STATEMENT OF THE EVIDENCE.

Monday, December 18th, 1922—ten o'clock a. m.

At the hearing of said case before Hon. Robert E. Lewis, Circuit Judge for the Eighth Judicial Circuit, Hon. Thomas E. Munger, United States District Judge for the District of Nebraska, and Hon. Joseph W. Woodrough, United States District Judge for the District of Nebraska, the parties, to maintain the issues upon the plaintiff's application for a temporary injunction, adduced and read in evidence the following documentary proofs and made the following oral stipulations in court:

Plaintiff, to maintain the issues on its part, offered the oral admission of defendants' counsel, made in open court at the hearing of said case, that so much of the testimony adduced by counsel for the Chicago & Northwestern Railway Company and the Chicago, St. Paul, Minneapolis & Omaha Railroad Company adduced upon their applications for temporary injunctions in cases pending before the court, depending for their integrity upon proof of over-valuation of said railways for property and under-valuation of all their property in the state for purposes of taxation for 1922, might be received and considered by the court on the application of the Chicago, Burlington & Quincy Railroad Company herein, and counsel for said railroad companies also orally agreed in court that the testimony

offered by the defendants in said actions material to the several causes might be received so far as competent and relevant.

138 EXTRACTS FROM PLAINTIFF'S BILL.

The Petition in Equity before the Court, amongst other allegations, contained the following:

VIII.

Plaintiff in accordance with the statutes of Nebraska made a report to the State Board of Equalization and Assessment, and the county assessors, of the various counties in the state into or through which its lines of railway were constructed and are operated strictly in accordance with the law; that subsequently and on the 15th day of June, 1922, the State Board of Equalization and Assessment fixed the valuation of that part of plaintiff's property in Nebraska by it authorized to be assesed for taxing purposes at $137,589,782.00 on a basis of 2,861.6 miles of single track, the order being in the words and figures following to-wit:

"Office of the Governor, Lincoln, Nebraska.

June 15th, 1922.

"The State Board of Equalization reconvened at the office of the Governor at 10.30 A. M., all members present, the Governor in the chair. The question of railroad values for the year 1922 was then discussed by the Board, and the following resolution was unanimously adopted.

Resolved: That we, the State Board of Equalization and Assessment, in regular session held for the purpose of valuing and assessing the railroads in the State of Nebraska, for the purpose of taxation of their property in the said state, and having given due and full consideration to the returns furnished said Board by the several railroad companies and having taken into consideration the main track, side track, spur track, warehouse tracks, road bed, right of way and depot grounds, and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand, and supplies, monies, credits, franchises, and all other property

139 of said railroad companies, and having taken into consideration the gross and net earnings of the said railroads, the total amount expended in operation and maintenance, the dividends paid, the capital stock of each system or road, and the market value thereof, and the total amount of secured and unsecured indebtedness, and from all the information which we are able to obtain, do hereby ascertain, appraise, fix and assess for the purpose of general taxation, the full actual value of the property of each of the several systems or companies in the State of Nebraska, as hereinafter recited:

Railroad.	Miles of track.	Total actual valuation.
Chicago, Burlington & Quincy....	2,861.60	$137,589,782.00

That subsequently and during the meeting of the State Board, as provided by Section 5901, the said Board by complaint was notified that the assessing officers and Equalization Boards in their respective counties for taxation purposes for the year 1922 assessed all property within their jurisdiction at not to exceed fifty per cent of the actual value of such property. That the said State Board then well knew that the constitution and laws of Nebraska provided that all property in the state subject to taxation should be valued at its actual value for taxing purposes on the same basis used for the valuation and assessment of all other classes of property not exempted by law from taxation; that if the valuation of complainant's property in 1922 for taxation purposes should not be reduced to the same percentage of value that other property subject to taxation in said state has been valued for assessment purposes by the several county assessors and boards of equalization in 1922, or unless the
140 valuation of all other such property should be increased from fifty per cent of its value to its actual value, that is the valuation should be doubled, complainant would be denied the equal protection of the law guaranteed by the Constitution of the United States and the State of Nebraska, and its property would be taken for public purposes without just compensation and without due process of law, in derogation of the Fifth and Fourteenth Amendments to the Constitution of the United States, and of sections 3 and 21 of Article 1 of the Bill of Rights of the Constitution of the State of Nebraska.

That notwithstanding all of said knowledge and notice of inequality of the assessment of carrier's property as compared with that of all other classes of property the said State Board as its meeting made no change in the assessment of the value of your complainant's property either by reducing it to the same basis as that upon which all other property was valued nor by increasing the assessed value of all other property to its actual value as required by the constitution and laws of the State but did make some slight material equalizations as between counties and by its final decision and resolution as of August 2nd, 1922, intentionally maintained and preserved the inequalities in valuation of the several classes of property and retained the valuation of your complainant's property at 137% of its
141 actual value, while in the final adjustment all other property in the State of Nebraska (including real estate) was assessed not to exceed sixty-five per cent of its actual value. The said State Board thereupon determined the amount of all taxes required for state purpose and made a levy therefor of such as were within its jurisdiction.

IX.

Plaintiff further alleges that pursuant to Section 5905 aforesaid the State Board complied therewith and immediately on said August 2nd, 1922 certified said levy and the results of its equalization to the respective county clerks and deprived plaintiff of any opportunity of either adopting or pursuing any legal procedure to review

the acts of said State Board either by error or praying for an injunction against its illegal acts as herein set forth or otherwise.

Plaintiff further alleges that the valuation per mile of plaintiff's property so fixed by the State Board of Equalization and Assessment was forthwith by the county clerks transcribed upon the tax lists of their respective counties against plaintiff and its property; that the valuation per mile so illegally fixed by the State Board of Equalization and Assessment by the county clerks has been applied per mile to the levies provided by law for raising revenue for state, county, township, school district, and other purposes, and the county treasurers will force plaintiff to pay those taxes on said grossly
142 excessive and unlawful valuations unless restrained by the order of this Court.

That the treasurers defendant are not authorized to accept any tender made by plaintiff of the portion of the taxes which plaintiff acknowledges to be due but by law must collect the full amount certified to them.

That the said taxes become a lien on plaintiff's property on November 1st and will be due and delinquent December 1st, 1922, and that said defendants are now demanding payment of said taxes in full. Plaintiff alleges that no complaint is made herein as to taxes levied for city and village purposes.

X.

Plaintiff further alleges that the defendant Tax Commissioner, W. H. Osborne, Jr., and the State Board of Equalization and Assessment have notwithstanding plaintiff's yearly complaint, continually decreased annually the assessed value of all property other than Railroad property, but more particularly for this suit commencing with the year A. D. 1920, and during said time has likewise continually increased the valuation of plaintiff's property within the State of Nebraska, which is accurately described by the following figures:

Total Value of Lands and Improvements in Nebraska:

Year 1920, $2,144,473,350.00 being 68% of its actual value.
Year 1921, 1,831,048,877.00 being 53% of its actual value.
Year 1922, 1,753,312,309.00 being 62% of its actual value.

C. B. & Q. total valuations for said years are:

Year 1920	$131,755,655.00
Year 1921	131,755,725.00
Year 1922	137,589,782.00

143 That during each of said years the actual value of plaintiff's property in the State of Nebraska did not exceed $100,000,000.00.

The actual result being that the lands and all other property did not pay taxes to exceed 50% of their actual value and will not exceed

65 per cent for the year A. D. 1922; while this plaintiff will, if the assessment now complained of is permitted to stand, pay taxes at 137% of its actual value.

XI.

Now comes the plaintiff and by leave of court amends its Bill by substituting for Paragraph XI., page 27, the following:

Plaintiff alleges that its railroad extends through the following counties in the State of Nebraska, and that the amount of the tax levied upon the valuation herein complained of and the illegal .5255 percentage thereof in each county resulting from the wrongful scheme and rule of valuation, which the respective treasurer of each county, defendant herein, is demanding and threatening to collect with the legal portion, in the performance of their alleged respective duties, are set forth in the columns following, to-wit:

County.	Tax levied.	Illegal part.
Adams	$41,507.93	$21,812.42
Antelope	8,660.55	4,551.12
Blaine	18,631.91	9,791.07
Box Butte	39,489.07	20,751.48
Buffalo	16,134.34	8,478.60
144 Burt	8,536.14	4,485.74
Cass	33,922.44	17,826.24
Cedar	6,115.01	3,213.44
Chase	9,413.41	4,946.75
Cheyenne	19,200.37	10,089.79
Clay	43,618.56	22,921.55
Colfax	1,489.61	782.79
Custer	61,138.76	32,128.42
Dakota	12,707.13	6,677.60
Dawes	23,755.86	12,483.71
Dawson	1,486.99	781.41
Dixon	10,135.11	5,326.00
Dodge	15,477.62	8,133.49
Douglas	14,508.03	7,623.97
Dundy	50,971.05	26,785.29
Fillmore	53,768.21	28,255.19
Franklin	36,310.91	19,081.38
Frontier	20,481.78	10,763.18
Furnas	51,165.77	26,887.61
Gage	51,430.94	27,026.96
Garfield	1,572.57	826.39
Gosper	10,565.71	5,552.28
Grant	23,312.07	12,250.49
Greeley	18,927.49	9,946.40
Hall	19,328.98	10,157.38
Hamilton	26,727.49	14,045.30
Harlan	66,728.73	35,065.95

County.	Tax levied.	Illegal part.
Hayes	3,657.76	1,922.15
Hitchcock	44,871.83	23,580.15
Holt	8,904.30	4,679.21
Hooker	25,441.01	13,369.25
Howard	14,706.43	7,728.22
Jefferson	23,319.62	12,254.46
Johnson	28,172.00	14,804.38
Kearney	38,350.86	20,153.37
Lancaster	71,540.18	37,594.36
Lincoln	34,891.20	18,335.32
Merrick	9,709.18	5,102.17
Morrill	28,703.66	15,083.77
Nemaha	14,265.39	7,496.16
Nuckolls	26,166.16	13,750.31
Otoe	18,718.08	9,836.35
Pawnee	25,722.12	13,516.97
Perkins	25,272.56	13,280.73
Phelps	31,693.22	16,654.78
Pierce	8,471.05	4,451.53
Platte	2,489.35	1,308.15
Polk	1,165.48	612.45
Red Willow	58,486.17	30,734.48
Saline	48,741.51	25,613.66
Sarpy	34,965.27	18,374.24
Saunders	42,247.78	22,201.20
145 Scottsbluff	25,133.48	13,207.64
Seward	27,448.81	14,424.34
Sheridan	35,626.58	18,721.76
Sherman	26,522.10	13,937.36
Sioux	10,630.76	5,586.46
Thayer	24,471.39	12,859.71
Thomas	32,323.45	16,985.97
Thurston	13,544.89	7,117.83
Valley	15,015.67	7,890.73
Webster	37,728.55	19,826.45
Wheeler	1,649.44	866.78
York	25,761.76	13,537.80

Because of official tax statements not being received for the year 1922 plaintiff on information and belief alleges that for the year 1922, the taxes for the two following counties, with the illegal portion will appear as follows:

County.	Tax levied.	Illegal part.
Butler	$15,000.00	$7,882.50
Richardson	35,000.00	18,392.50

Endorsed on margin of said Par. XI: Amended by leave given December 2, 1922.

XII.

Plaintiff further alleges that the State Board in its resolution adopted on June 15th, 1922, valuing and assessing plaintiff's property in Nebraska, recites that there was considered, with other classes of property, plaintiff's moneys, credits, net earnings, dividends paid, the capital stock and market value thereof. That as to this plaintiff alleges that it has a value composed of property consisting of credits, investments and securities of various designations which are
146 held by it and which have no relation to the operation of the railroad in Nebraska or elsewhere, nor has it added to the value of the road or the rights by it exercised in the State of Nebraska either for the year 1922 or prior years. It also has a definite situs in other states and for the year A. D. 1922 it was there subject to assessment and taxation separately and apart from the railroad at the places where it was so assessable and taxable in conformity to the laws of the respective states where such properties are situated, they being as follows:

	Estimated value.
Elevator Investments, Chicago and Burlington	$326,844.59
Coal Investments, Illinois	3,663,500.68
Sundry Investments	3,851,553.08
Union Depot Securities	175,349.12
Investments in Terminals	5,319,844.12
Miscellaneous Bonds	1,788,882.22
Stocks & Bonds of Roads held for control	27,922,783.87*
Cash & Cash Assets—Balance	7,104,797.46
Local property, Illinois	11,500,000.00
Local property, Iowa	645,000.00
Local property, Iowa (Woodbury County)	13,820.00
Local property, Wisconsin	48,000.00
Local property, Minnesota	77,500.00
Local property, Missouri	7,867,500.00
Local property, Kansas	267,300.00
Local property, Nebraska	2,171,884.00
Local property, South Dakota	35,320.00
Local property, Wyoming	152,200.00
Local property, Colorado	516,150.00
North Platte to Bridgeport, Nebraska	229,327.00
	$73,677,476.14

147 That all of said properties and the income therefrom are reflected in the market value of plaintiff's stocks, bonds, surplus and dividends, and the value of said property so elsewhere assessable and taxable for the year A. D. 1922 aggregates $73,677,476.14. That to aid the Board in arriving at a just valuation of plaintiff's

*Includes cost of Colorado & Southern Ry. Stock $19,643,451.88.

property within the State of Nebraska plaintiff with other items submitted the foregoing items of property situate beyond the State of Nebraska and that locally assessed in Nebraska and beyond the Board's jurisdiction, but notwithstanding said statement so furnished, it intentionally, systematically but erroneously included said property in ascertaining and assessing the value of your plaintiff's property for said year 1922, and likewise for the years A. D. 1920 and 1921. That the same was included within said valuation or that percentage thereof which the said State Board took as representing the pro rata therein, which should be taken as the value of plaintiff's property in the State of Nebraska for each of the aforesaid years. In this your plaintiff further alleges that in so far as said properties were considered by the State Board and taken as a part of the valuation of plaintiff's property, their action was illegal and void and that the value of said properties in the aforesaid sum should have been deducted before ascertaining and assessing that part of the value which belonged to the State of Nebraska. That plaintiff is entitled
148 to a reduction of its valuation so made by the State Board for taxation by the percentage allocated to the State of Nebraska by the Board which plaintiff alleges is not less than twenty-three per cent for the year A. D. 1922, or a total of $16,945,819.00.

XIII.

Plaintiff further states that the State Board of Equalization and Assessment and the several county assessors and county boards of equalization of the state of Nebraska, have for many years last past assessed and valued farm land in the state of Nebraska at much less than the true value thereof; that the provision in the statutes of Nebraska that the real estate shall be assessed separately from the improvements thereon, permits the local assessors and taking officers to and on information and belief plaintiff alleges that they almost uniformly do assess the improvements at but a small fraction of their actual value, to wit, not to exceed ten to twenty-five per cent of their actual value, and where buildings thereon, frequently expensive in character, are constructed upon land, the local assessors for years have ignored such improvements, and do not assess them at all. That during the year 1920 farm lands in the State of Nebraska constituted more than fifty-five per cent of the value of all property in the state, other than railroad property, and the county assessors and the State Board of Equalization and Assessment fixed for tax-
149 ing purposes the value of such real estate at but sixty-eight per cent of the true value of such farm land; that the valuation of farm land in the State of Nebraska as returned by the county assessors of the several counties, and as adjusted and equalized by the State Board of Equalization and Assessment for the year 1921 was fixed at but forty-seven per cent of the true value of said farm lands; that such undervaluations for taxing purposes by said officials was the result of a systematic, intentional, notorious and continuous undervaluation of farm lands by the several county assessors and the

State Board of Equalization and Assessment for taxing purposes; that in 1922 all farm lands in the state of Nebraska were likewise undervalued for taxing purposes, and their valuation fixed at not to exceed 62 per cent of their true value by the local taxing authorities, and the State Board of Equalization and Assessment knowingly and intentionally joined and participated in further pursuance of the scheme and plan that had obtained for many years, and yet obtains in the State of Nebraska, to undervalue farm lands for taxation for the purpose of relieving such lands of their just share of the taxing burden in the state by refusing to raise said valuation or to equalize it with the properties of your plaintiff. In that behalf plaintiff alleges that the defendant Osborne, as Secretary of the State Board of Equalization for the year 1920 published a statement showing the result of the valuation by the county assessors as equalized by the State Board of Equalization with respect to farm lands as follows:

"The abstracts of assessment have been received covering lands and improvements for all the counties except Arthur. The returns show that the precinct assessors and other local assessing officials throughout the state have placed a value on lands and improvements which average over 68 per cent of the average value as established by the ratio process based on actual sales. It would seem only fair and just that the State Board would accept this average valuation established by almost 2,000 precinct assessors and in equalizing the land and improvements between counties, maintain, as nearly as possible, for each county, an assessed actual valuation of 68 per cent of the actual value as established by the ratio process."

And plaintiff alleges and charges that for the year 1920 the valuation of farm lands for taxing purposes in Nebraska was equalized and fixed by the State Board of Equalization at only 68 per cent of the true value thereof in violation of the Constitution and Laws of the State of Nebraska, as above set forth.

Plaintiff further alleges and charges that the adoption of said valuation of 68 per cent for the year 1920, on real estate was intentional and deliberate and pursuant to concerted action by the State Board of Equalization and the several county assessors and in that behalf alleges and charges that the said State Board of Equalization made and published a statement of the result of its action as a Board of Equalization for the year 1920 as follows, to wit:

"In the matter of equalization between counties, the State Board has adhered to the early announced plan of accepting for valuation purposes the average value placed on lands and improvements by the precinct and county assessing officials. For equalization between counties, the value returned by the assessing officials of each county has been compared with the average real value, as established by the ratio process, based on bona fide sales from July 1, 1918, to July 1, 1919. The equalization of the counties on the basis of the sale average was requested by the Board at the

meeting of the assessing officials of the counties held July 20, 1920. The ratio process, used in correcting the sale averages, is the plan used by Wisconsin for a number of years, and Minnesota and other states have adopted the same plan.

Under this plan of equalization, the State Board has the combined judgment as to value, of the assessing officials of the counties and of the buyers and sellers of real estate for a year's period. The year taken was previous to the land boom and does not cover the period of the highest prices.

The valuations as returned by the County Board has averaged 68 per cent of the real value, as determined by the ratio process, and the State Board adopted this 68 per cent as the basis for equalizing purposes."

Plaintiff further alleges and charges that the State Board of Equalization and the County Assessors of the several counties, pursuant to said purpose and plan to undervalue all farm lands in the state for taxing purposes for the year 1921 met in convention at the City of Lincoln on the 18th day of March, 1921, and adopted a resolution in words and figures following, to wit:

"*Resolution Adopted at State Assessors' Meeting March* 18, 1921.

At a meeting of the county assessors, held at Lincoln, Nebraska, on March 18, 1921, the following resolution, introduced by Harry W. Scott, of Pawnee City, was adopted:

'Whereas, there has been an expression representing the sentiment of sixty-four counties and the result of such expression seems to average 15 per cent reductions under 1920 real estate values.

152 'Therefore, be it resolved, that it be the sense of this meeting that the aggregate return of the value of real estate in each county be returned to the State Board at not to exceed a 15 per cent reduction.

'It being understood that this shall in no way be binding upon any county, but merely suggests a uniformity of action.

'Dated this 19th day of March, 1921. (Signed) G. L. Munford, Secretary-Treasurer.'"

Plaintiff further alleges and charges that the defendant, Osborne, as Tax Commissioner, provided each and every county assessor in the State of Nebraska with a copy of said resolution and stated to said assessor in writing as follows:

"The above and foregoing is a verbatim copy of a resolution adopted by the county assessors of the State, at their meeting, held in the City of Lincoln, on March 18, 1921, and it is requested by this department that you read the resolution over carefully, so that the result of their labors will be in accordance with the thought of the conference. We very much desire to avoid the necessity of being compelled to again equalize to any great extent by counties this year, feeling as we do, that we have a very good equalization over the State at this time, and where the occasion demands, the State Board

will not shirk its duty to fairly and equitably raise or lower any county, to the end that each bears its just relation, one to the other."

Plaintiff further alleges and charges that the said several county assessors, pursuant to said express purpose, returned the valuation of real property in their respective counties at only about 53 per cent of the true value thereof, and that the State Board of Equalization upon receiving said returns from the said several counties equalized the valuations on real property so that the average valuation does not exceed 53 per cent of the true value of real property in the
153 State of Nebraska for the year 1921; that said concerted action by the said county assessors and the State Board of Equalization to return a valuation for taxing purposes on real property of only about 53 per cent of the true value thereof, was in violation of the Constitution and Laws of the State of Nebraska and in violation of the duties of said officials and in violation of the rights of the plaintiff, whose property has been fixed by said Board of Equalization at more than the true full actual value thereof.

That because the taxing authorities of the State of Nebraska were cognizant of the fact that the railroad companies of the state of Nebraska were making extensive investigations to bring into view the truth with respect to the undervaluation of farm lands in the state of Nebraska, the State Tax Commissioner issued his instructions to county and precinct assessors in Nebraska in 1922, advising them that it was their duty, as follows:

"We will first take up the Rural Real Estate Assessment which must be made again this year. Those of you who are familiar with the old Revenue Law will recall that prior to 1921, real estate was only assessed once every four years but the Legislature of 1921 passed a law requiring that the new assessment pertaining to real estate should be made in 1921, again in 1922 and every two years thereafter. Real estate generally, was reduced approximately fifteen per cent uniformly over the state in the year 1921. This emergency legislation on the part of the Legislature was made in the hope that some relief could be given the owner of real property in the way of taxes, but such was not the case, for, notwithstanding the fifteen per cent reduction in the valuation of real property uniformly over the state, this reduction was not reflected in the real estate tax receipt, nor could it be, for the reason that there is obviously only
154 one way to accomplish this result and that is lower the expenditures of the state and its taxing subdivisions. We are compelled to make another assessment of real estate this year, 1922, which will stand for two years or until 1924 when another assessment will be made. The only instructions that I am permitted to give you in valuing this class of property is that directed to you by the statutes, namely at its actual value, and as defined in the Revenue Law, Actual Value means its actual value in the market in the ordinary course of trade."

Plaintiff alleges that the purpose and intent of issuing the instructions in the above form was to encourage county and precinct assessors to further depreciate the value of real estate for taxing pur-

poses under the undervaluations of the preceding years, and that in harmony with such intent and instructions, the county assessors did further in 1922 undervalue farm lands for the purpose of taxation.

XIV.

Plaintiff further alleges that in accordance with Section 5977 the County Assessor in each county in the State of Nebraska prepared an abstract of the assessment rolls of his county, and forwarded it to the State Board of Equalization and Assessment before the 10th day of July, 1922; that said abstracts disclose the total number of acres of taxable land in each county; the aggregate assessed value of all taxable land; and the average assessed value per acre of all taxable land; and that said abstracts show, and the plaintiff alleges the fact to be, that there were at the times hereinbefore mentioned, and now are, in the State of Nebraska, forty-six million four hundred twenty-
one thousand six hundred forty-seven (46,421,647) acres of
155 taxable land.

Plaintiff further alleges that the said abstracts forwarded by the county assessors to the State Board of Equalization and Assessment also disclose the aggregate assessed value of all town lots and personal property in each county, and the total assessed value of all taxable property therein.

Plaintiff further alleges that in accordance with Section 5901 the State Board of Equalization and Assessment met at the State Capitol in the month of July, 1922, and proceeded to examine the abstracts of property assessed for taxation in the several counties of the State, and did equalize such assessments as between counties, but that in such equalization the said Board made no substantial change in the aggregate assessed valuation of taxable land or other real estate or personal property.

Plaintiff further alleges that said abstracts as equalized and the resultant tax lists show that the aggregate assessed value of all taxable land, including improvements thereon, in the State of Nebraska for 1922 is One Billion Seven Hundred Fifty-three million, Three Hundred Twelve Thousand, Three Hundred Nine Dollars ($1,753,312,309) and that the average assessed value per acre of all taxable land, including improvements thereon in the State of Nebraska for 1922 is Thirty-seven and 77/100 Dollars ($37.77).

Plaintiff further alleges that the actual value of all taxable land, and improvements thereon, in the State of Nebraska for the
156 year 1922 in the market in the ordinary course of trade was in excess of the aforesaid sum, and that the actual value thereof in the market in the ordinary course of trade was at least Two Billion Six Hundred Ninety-seven Million, Four Hundred Three Thousand, Five Hundred Fifty-one and no/100 Dollars ($2,697,403,551.00), or at least Fifty-eight and 10/100 Dollars ($58.10) per acre.

Plaintiff further alleges that said abstracts as equalized and the resultant tax lists show that the aggregate assessed value of all town lots, including improvements thereon, in the State of Nebraska for the year 1922 is Five Hundred Thirty-nine Million Seven Hundred

Thirty Thousand Seven Hundred Eighty-five and no/100 Dollars ($539,730,785.00).

Plaintiff further alleges that the actual value of all town lots, and improvements thereon, in said State of Nebraska for the year 1922 was and is in excess of the aforesaid equalized value and instead thereof the actual value in the market in the ordinary course of trade was at least Eight Hundred Thirty Million, Three Hundred Fifty-five Thousand Fifty-three and 80/100 Dollars ($830,355,053.80).

Plaintiff further alleges that the said abstracts as equalized and the resultant tax lists show that the aggregate assessed value of all personal property other than property subject to assessment by the State Board of Equalization and Assessment in the State of Nebraska for 1922 is Five Hundred Thirty-one Million Two Hundred Forty-five Thousand One Hundred Eight-six and no/100 Dollars ($531,-
157 245,186.00), that the actual value of all said personal property in said State for the year 1922 in the market in the ordinary course of trade was in excess of the aforesaid equalized value and instead thereof the actual value was at least Eight Hundred Seventeen Million Three Hundred Thousand Two Hundred Eighty-six and no/100 Dollars ($817,300,286.00).

Plaintiff further alleges that by the action of the assessors of the various counties of the State of Nebraska, and by the action of the State Board of Equalization and Assessment, the value of said taxable land in the State of Nebraska so fixed for the purpose of assessment and taxation as the basis or taxable value upon which to compute taxes under the laws of the State of Nebraska, in truth and in fact represents not to exceed Sixty-Five per cent (65%) of the real value of said taxable land in the market in the ordinary course of trade and of the reasonable value thereof; and plaintiff avers that the taxable lands in the State of Nebraska constitute and comprise Fifty-Five per cent (55%) of the taxable property in the State of Nebraska subject to assessment and taxation and comprise sixty-one per cent (61%) of said taxable property exclusive of railroads.

Plaintiff further alleges that the value of its property in the State of Nebraska subject to assessment by the State Board of Equalization and Assessment under the laws of the State of Nebraska, does not exceed One Hundred Million Dollars ($100,000,000.00); that plain-
tiff owns and operates 2,861.60 miles of railroads in the State
158 of Nebraska, and that the value of its said railroad property so subject to assessment by said Board therefore does not exceed Thirty-Four Thousand Nine Hundred Forty-Five and 45/100 Dollars ($34,945.45) per mile; but this plaintiff avers that the taxable value of its property subject to assessment by said Board under the laws of the State of Nebraska, when considered in the light of the assessment of taxable land and other real and personal property, except property subject to assessment by the State Board of Equalization and Assessment, in said State, as hereinbefore averred, is not in excess of Twenty-Two Thousand Seven Hundred Fourteen and 54/100 Dollars ($22,714.54) per mile, aggregating $64,999,927.66 for the State of Nebraska; and plaintiff avers that it is willing to,

and will, pay such lawful taxes as are levied upon said last aforesaid sum or value per mile, or upon such other sum as this Court may determine to represent the fair and equitable taxable value of its property per mile as compared to the tax burdens imposed upon taxable land in said State.

That the systematic assessment upon such basis is, and for many years past has been, a matter of public notoriety in the State; that the fact that such assessors have indulged in such habitual, intentional systematic and general custom in so assessing taxable land and other real estate and personal property at materially less than its value in the market in the ordinary course of trade, was known to the State Board of Equalization and Assessment at and prior
159 to the time it assessed plaintiff's property; that notwithstanding this knowledge on the part of the said State Board of Equalization and Assessment, it intentionally assessed the plaintiff's property subject to assessment by it at One Hundred Thirty-Seven per cent (137%) of its actual value.

XV.

Plaintiff further alleges that the action of the Board of Equalization and Assessment, and the several county assessors and county boards of equalization in undervaluing farm lands for the purpose of taxation pursuant to said intentional, concerted and pre-arranged plan, while at the same time valuing the property of the plaintiff at one hundred per cent and more of its true value for taxing purposes, constitutes an unlawful discrimination against plaintiff, and compels it to bear more than its just proportion of the burden of taxation in the State of Nebraska in violation of the constitution and laws of the State of Nebraska, as above set forth, and in violation of the guarantees contained in the Enabling Act above referred to as ratified and confirmed by the electors of the State of Nebraska. That the action of the State Board of Equalization and Assessment, and of the several county authorities in intentionally and systematically undervaluing farm lands, which constitute fifty-five per cent of the taxable property of the State, while requiring plaintiff to pay
160 taxes on the full actual value and more of its property, constitutes an unjust and an unlawful discrimination against plaintiff, and denies to plaintiff the equal protection of the law guaranteed by the Constitution and laws of Nebraska, guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States, and deprives plaintiff of its property without due process of law, takes its property for public use without compensation in violation of the Fourteenth Amendment to the Constitution of the United States.

XVI.

Plaintiff further alleges that the intentional and systematic undervaluation by the State Board of Equalization and the several county assessors of farm lands within the State of Nebraska, being about fifty-five per cent of the total taxable property in said state, at only

62 per cent of the true value thereof, for taxing purposes, while valuing the property of the plaintiff at one hundred thirty-seven per cent or more of its true value, and requiring plaintiff to pay taxes on said value constitutes and is an unlawful burden upon interstate commerce, in that more than 68 per cent of the commerce carried by plaintiff over the lines of its railroad in the State of Nebraska is interstate in character; that all taxes which plaintiff is required to pay in the State of Nebraska are chargeable to expenses of operation, and that for the defendants, by said unlawful and intentional
161 discrimination in valuation between plaintiff and other taxpayers in the State, to impose an undue and unlawful expense upon the handling of interstate commerce, constitutes and is an unlawful discrimination against interstate commerce, and an unlawful burden thereon in violation of the Constitution of the United States.

XVII.

Plaintiff further alleges that it is entitled to the equal protection of the laws of the State of Nebraska; that said laws of the State of Nebraska make it the duty of the State Board of Equalization and the several county assessors to fix valuations of all property in the State at true, full, actual value; that the said State Board of Equalization has full power to correct any inequality of valuations which may be returned by the several county assessors, and it was the duty of said State Board of Equalization so to do, but plaintiff alleges that the said State Board of Equalization, in violation of the Constitution and Laws of the State of Nebraska, not only did not change said valuation so as to put plaintiff upon a basis of equality with other taxpayers, as required by law, but the said State Board of Equalization intentionally cooperated with the said county assessors for the purpose of returning the value of farm property at only 62 per cent of the true value thereof for taxing purposes, while requiring the plaintiff to pay taxes upon more than the full actual
162 value of its property within the state; that the said State Board further purposely and intentionally refused to correct an error in plaintiff's return to the State Tax Commissioner for the use of the State Board, which consisted of plaintiff's return on the prescribed forms of the State Board designated as Form "G" and Form "9," in that in Form "G" the operating expenses in Nebraska were given as $27,420,906.19, when they actually were $31,289,319.97, the difference being $3,868,413.68. That by reason of said error the net income in Nebraska for the year 1921 was greater than the actual net income by the last aforesaid amount. That proof of said error was made to the State Board of Equalization and Assessment, and in explanation thereof, which plaintiff now alleges to be the fact, upon March 15th, A. D. 1922, the principal office building of plaintiff in the City of Chicago, County of Cook, Illinois, was practically destroyed by fire, with a large part of the records, including part of those from which it was necessary to formulate and answer the questions included in the aforesaid forms "G" and "9";

that the data necessary for said information had to be re-assembled from the different departments and when so re-assembled it developed the error hereinbefore set forth; that said error was not disclosed by the re-assembling of said data until a short time previous to the date of the hearing before the said State Board upon the complaint of this plaintiff for equalization. That notwithstanding said palpable error and the proof thereof before the State Board,
163 which was not controverted, the State Board refused to make any adjustment or equalization of plaintiff's valuation.

That the said several actions of the taxing authorities mentioned denies to plaintiff equal protection of the law, guaranteed by the Fourteenth Amendment to the Constitution of the United States.

XVIII.

Plaintiff further alleges that it has no remedy at law in the premises; that heretofore the Supreme Court of the State of Nebraska, by repeated decisions, has held that a taxpayer whose property is assessed at one hundred per cent or more of its true value, while the property of other taxpayers is valued at only a fraction of true value, has no remedy save and except to use its best endeavors to have the taxing officials raise the valuations of the property of other taxpayers, of which notice must be given, which procedure is futile and is not an adequate remedy at law.

XIX.

Plaintiff further alleges that it has always been and now is willing to pay its lawful share of the taxes of the state, and in that behalf plaintiff alleges that it is willing and hereby offers to pay to the several county treasurers as soon as said taxes become due and payable to said treasurers all taxes lawfully levied against its property based upon a valuation not exceeding sixty-five per cent
164 upon a valuation of plaintiff's property of $100,000,000.00, or 0.4745 per cent of the tax on the valuations certified to the several county clerks and the county treasurers by the State Board of Equalization and Assessment for the year 1922, and plaintiff alleges that it will keep said offer good and will pay said taxes when due upon said basis, and will pay all city and village taxes in full.

XX.

Plaintiff further alleges and charges that said unlawful taxes constitute a lien against plaintiff's property and a cloud upon plaintiff's title to said property, that the lien of said taxes against plaintiff's property will unlawfully burden plaintiff in its ability to finance its business as a common carrier of interstate commerce, and cripple, injure, and impair the plaintiff in the operation of its line of railroad as a common carrier of interstate commerce. And plaintiff further alleges that the defendant county treasurers, and each of them, will issue numerous distress warrants against the plaintiff and against its property and will cause to be instituted enormous

numbers of suits against the plaintiff for the collection of said unlawful and discriminatory taxes unless each of them, their successors, agents, employes and all other persons acting by, through or under their authority or direction be restrained from so doing by order of this court.

165 SUMMARY OF C., B. & Q. EXHIBITS 1 AND 3.

Plaintiff offered and there was received in evidence, without objection, C., B. & Q. Exhibits "1" and "3," being the affidavits of A. W. Scribner and of Pollock Parmele, with their attachments.

Scribner testified that under his supervision and direction an investigation was made with respect to the value of property covered by 1,783 mortgages relating to tracts of forty acres or more of land within the State of Nebraska, in sixty-six counties traversed by the Union Pacific and Burlington railway lines, filed between March 31, 1920 and April 1, 1922.

No mortgages included in compilation excepting those in which Loan & Trust Companies were mortgagees.

Total acreage	369,541 acres
Total amount of mortgage consideration	$13,282,664
Number of Loan Companies	44
Mortgagees' appraised value	$40,523,743
Owners' appraised value	$49,664,610
Assessed valuation of same tracts of land for 1921	$22,287,278
Assessed valuation of all of those lands in 1922	$21,664,378
Percentage of assessed value to owners' appraisal in 1921	44.9%
In 1922	43.7%
Percent of assessed value to Loan Co.'s value in 1921	55%
In 1922	53.5%

This affiant further stated that the details of the information were in his possession as to every tract of land referred to but
166 were too cumbersome to attach.

Parmele testified that he re-checked or caused to be re-checked, under his direction and supervision, all of the transactions referred to in Scribner's affidavit but eliminated all mortgages filed between March 31, 1920 and March 31, 1921, so as to bring into view the record between April 1, 1921 and April 1, 1922, which show 1,300 mortgages.

Acreage mortgaged	268,522 acres
Consideration	$9,885,152
Owners' appraised valuation	$36,604,903
Loan Co.'s valuation	$29,406,343
Assessed valuation in 1922	$16,295,888
Percent assessed value to owners' valuation in 1922	44.5%
Percent of assessed value to Loan Co.'s valuation in 1922	55.4%

The attachments to the affidavits of Scribner and Parmele are identical save and excepting with respect to the recitation of: "Less mortgages filed March 31, 1920 to March 31, 1921" at the bottom of the attachment to Parmele's affidavit and the figures that are extended in two columns to the right of the quoted language.

The attachment to Parmele's affidavit is in the following words and figures:

(Here follows Exhibit 13 to Parmele's affidavit, marked side folio pages 167 and 167½.)

168 SUMMARY OF C., B. & Q. EXHIBIT 2.

Plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "2", being another affidavit of A. W. Scribner revealing that in 53 counties in Nebraska he caused an investigation to be made to ascertain the consideration recited in warranty deeds recorded for sales of real estate in tracts of forty acres or more between March 1, 1921 and April 1, 1922, excluding those transfers with a nominal consideration as "one dollar" or "for love and affection", and caused an exhibit to be made tabulating the facts.

Total transfers	2,752
Total acreage	667,415 acres
Total consideration	$35,801,350
Assessed valuation of these tracts for 1922	$16,616,722
Average sale price per acre	$53.64
Average assessed valuation of these farms for 1922, per acre	$24.89
Percentage of assessed valuation of farm land to sales consideration	46.5%

The tabulation thus prepared and attached to said affidavit is as follows:

(Here follows tabulation marked side folio page 169.)

170 SUMMARY OF C., B. & Q. EXHIBIT 4.

The plaintiff produced and offered and there was received and read in evidence, without objection, C., B. & Q. Exhibit "4", consisting of 138 separate affidavits, 137 of these affidavits being made by individuals long resident in the counties wherein they reside; that they are well acquainted with real estate and its value in the counties of their residence and they state the actual, fair, cash value of farm land in their respective counties on April 1, 1922. All of the affiants own land in the county of their residence. Amongst these affiants are men engaged in the abstract and real estate busi-

Exhibit 13 to Parmele's affidavit.

RECAPITULATION OF LISTS OF MORTGAGES TO MORTGAGE, LOAN AND TRUST COMPANIES DATED BETWEEN MARCH 1920 AND MARCH 1922.

AND A COMPARISON OF THE ASSESSED VALUATION OF THE LANDS UNDER MORTGAGE, WITH THE APPRAISEMENTS OF THE OWNERS' AND LOAN COMPANIES.

Name of County.	Number of Mortgages.	Total Consideration of Mortgages.	Number of Acres Mortgaged.	Valuation by Owners.	Appraisement by Loan Companies.	Assessed Valuation. 1921	Assessed Valuation. 1922	Per Cent Assessed Valuation to Owners' Valuation. 1921	Per Cent Assessed Valuation to Owners' Valuation. 1922	Per Cent Assessed Valuation to Loan Co's. Appraisement. 1921	Per Cent Assessed Valuation to Loan Co's. Appraisement. 1922.
Adams.	20	$ 119,000	3,243	$ 416,450	$ 374,987	$ 224,762	$ 223,665	55.9%	53.7%	59.9%	59.7%
Banner	12	54,800	5,240	275,000	176,470	55,600	42,534	20.4	15.6	31.5	24.1
Box Butte	3	15,560	1,120	54,400	51,200	6,700	8,900	12.3	16.4	13.1	17.4
Boone	32	284,700	5,805	911,229	749,028.75	407,260	407,290	44.7	44.7	54.4	54.4
Buffalo	21	126,200	3,576	471,518.25	360,790	179,227	165,597	38.1	35.1	49.8	45.9
Burt.	70	717,700	11,518	2,707,602.	2,379,770	1,357,552	1,384,242	50.1	51.1	57.0	58.1
Butler	34	285,800	5,053	1,063,130	822,015	465,399	464,855	43.7	43.7	56.6	56.5
Cass	48	478,725	7,906	1,753,005	1,427,555	888, 711	853,802	48.5	45.3	59.5	59.8
Cedar	110	937,800	18,484	3,298,990	2,862,115	1,858,742	1,670,135	56.	50.0	64.1	58.0
Chase	5	30,000	2,070	98,000	83,600	28,055	26,020	28.6	26.6	31.7	29.4
Cheyenne	40	242,200	18,931	1,097,070	821,825	358,720	359,185	32.7	32.8	43.6	43.7
Clay	35	210,600	4,392	861,560	751,260	331,381	346,140	38.5	40.2	44.1	46.1
Colfax	25	205,500	3,667	860,400	694,326.75	427,705	426,146	49.7	49.5	61.4	61.4
Custer	79	450,912	16,364	1,784,170	1,350,125.	565,645	588,610	31.1	31.3	41.8	41.4
Dakota.	43	352,300	6,593	1,230,376	1,025,814.	652,751	651,055	53.1	52.9	63.6	63.4
Dawson	15	66,000	4,018	226,750	191,570	100,820	94,175	44.4	45.5	52.6	49.1
Deuel	14	82,300	3,840	291,200	213,200	105,475	107,975	36.2	37.1	49.5	50.7
Dixon	106	739,900	14,419	2,596,728.50	2,181,667.30	1,202,453	1,012,900	46.3	39.0	55.1	46.5
Dodge	46	371,600	6,018	1,467,693.	1,112,715	686,940	649,812	46.8	44.3	61.7	58.4
Dundy	18	88,800	7,438	298,500	248,800	94,375	83,290	31.6	27.9	37.9	33.5
Franklin	5	21,800	1,122	106,500	75,800	39,700	34,900	37.2	32.8	52.3	46.0
Frontier.	18	58,700	5,790	262,600	185,700	80,661	80,307	30.6	30.6	43.6	43.4
Furnas	2	5,000	700	40,550	36,340	15,855	17,525	39.1	43.2	43.7	48.2
Gage	44	348,750	6,160.50	1,133,615	1,061,590	503,756	512,100	44.5	45.2	47.4	48.2
Garden	11	66,700	4,427	284,985	192,200	99,995	97,955	35.1	34.3	52.0	50.9
Garfield	4	16,700	2,915	65,571	49,647.25	31,329	30,972	47.8	47.3	63.1	63.0
Gosper	6	22,000	1,360	149,225	124,800	49,950	51,581	33.5	22.2	40.0	41.3
Greeley	38	229,400	8,655	849,720	659,700	349,858	290,285	41.2	34.1	53.	44.0
Hall	21	131,600	3,346	457,926	352,687.50	198,885	197,995	43.2	43.3	55.0	54.6
Hamilton	74	359,250	8,609	1,447,530	1,171,430	781,618	757,541	52.6	52.3	65.0	64.7
Harlan	7	46,000	1,434	127,500	108,590	57,025	55,020	44.7	43.2	52.5	50.7
Hayes	8	32,000	2,780	106,600	91,500	42,080	33,914	39.4	31.8	45.9	36.0
Howard	12	64,100	1,938	226,500	165,450	92,275	92,275	40.7	40.7	55.8	55.8
Hooker	3	6,000	1,731	21,900	15,700	6,260	8,260	28.6	28.6	39.9	39.9
Jefferson.	25	183,300	5,144	607,480	524,887	322,200	316,100	53.0	52.0	61.2	60.2
Johnson	29	192,400	4,374	727,890	600,638	366,439	360,609	50.3	48.1	61.0	59.0

Name of County.	Number of Mortgages.	Total Consideration of Mortgages.	Number of Acres Mortgaged	Valuation by Owners.	Appraisement by Loan Companies.	1921	Assessed Valuation 1922	Per Cent Assessed Valuation to Owners' Valuation 1921	Per Cent Assessed Valuation to Owners' Valuation 1922	Per Cent Assessed Valuation to Loan Co's Appraisement. 1921	Per Cent Assessed Valuation to Loan Co's Appraisement. 1922
Kearney	3	$ 17,000	842	$ 56,800.	$ 45,700	$19,922	$ 19,457	35.1%	34.3%	43.6%	42.5%
Keith	12	70,100	4,264	298,500	208,600	88,898	72,475	30.4	30.9	38.8	34.7
Kimball	50	189,500	17,740	837,710	591,370	324,985	269,809	38.8	32.2	54.9	45.6
Lincoln.	09	34,700	3,120	146,400	115,115	38,880	30,015	26.5	20.5	33.9	26.1
Merrick.	22	176,000	4,286	670,900	545,845	270,238	278,550	40.4	41.5	49.1	51.0
Morrill	20	88,700	9,124	425,302	316,202	97,240	105,525	22.9	24.8	30.7	33.4
Nance	50	453,300	10,718	1,567,743	1,285, 953	691,774	683,865	44.2	43.6	53.9	53.1
Nemaha	14	99,500	1,822	349,100	281,034	158,571	158,721	45.4	45.5	56.4	56.6
Otoe	18	145,912	3,168	602,200	490,627	283,665	291, 600	47.1	48.4	57.8	59.4
Pawnee	11	84,940	1,880	273,000	243,620	132,380	132,965	48.1	48.7	54.3	54.6
Perkins.	17	60,750	3,530	208,850	199,100	79,814	78,152	38.3	37.0	40.1	38.3
Phelps.	5	27,700	1,040	115,000	96,400	50,555	50,385	43.9	43.7	52.4	52.2
Platte	61	462,600	9,703	1,879,003	1,545,154	934,290	925,291	49.8	49.2	60.5	59.9
Red Willow.	5	32,800	1,703	104,700	89,000	43,540	39,849	41.6	38.0	48.9	44.8
Richardson.	22	141,325	3,124	604,245	503,860	304,125	304,125	50.3	50.3	60.4	60.4
Saline	9	56,000	1,071	204,900	164,010	89,470	87,235	43.6	42.5	54.5	53.2
Sarpy	10	111,800	1,644	454,049	333,035	163,785	187,815	36.8	38.9	49.2	50.4
Saunders.	80	620,700	10,587	2,368,750	1,825,200	1,048,227	1,060,920	44.3	44.7	58.8	59.2
Scotts Bluff	6	25,500	1,834	96,150	77,850	34,222	33,015	35.6	34.3	43.9	42.4
Seward	20	121,200	2,560	555,775	479,700	206,986	210,035	37.3	37.8	43.2	43.8
Sherman	28	174,000	5,540	546,810	445,325	216,908	216,908	39.7	39.7	48.7	48.7
Thayer	46	300,000	7,113	1,038,855	893,445	471,940	463,915	45.4	44.6	52.8	51.9
Thomas	4	13,000	3,180	41,900	27,400	17,230	16,780	41.1	40.0	62.1	61.2
Thurston	131	563,300	9,928	1,889,890	1,606,095	886,161	873,665	46.9	46.3	55.2	54.5
Valley	25	162,000	6,574	536,774	431,972	212,745	212,745	39.6	39.6	49.3	49 3
Washington	21	182,750	2,897	711,165	607,423	378,892	360,378	53.3	50.0	62.3	59.3
Wayne	74	802,380	13,663	3,263,307	2,652,776	1,418,369	1,396,739	43.5	42.9	54.2	52.6
Webster	9	51,000	2,000	169,875	146,700	86,135	86,135	50.7	50.7	58.7	58.7
Wheeler	9	41,000	5,829	219,200	156,553	85,855	80,020	39.2	36.6	54.9	51.1
York.	36	275,600	8,874	1,028,585	808,191	492,855	485,422	46.9	47.1	59.7	60.0
TOTALS.	1,783	$13,282,664	369,541	$49,644,610	$40,523,743	$22,287,278	$21,664,378	44.9	43.7	55.9	53.5
Less mortgages filed March 31, 1920, to March 31st, 1921.	483	3,397,512	101,019	13,039,707	11,117,400	5,606,839	5,368,490	45.5	44.5	56.7	55.4
	1,300	9,885,152	268,522	36,604,903	29,406,343	16,680,439	16,295,888				

ness, farmers, bankers and business men, and in no other occupations.

The 138th affidavit correctly summarizes the information contained in the 137 affidavits as follows: The 137 affidavits were procured under the direct supervision of the affiant from 137 individuals of long residence in their respective counties, engaged in banking, real estate, abstracting or farming, in 54 counties in Nebraska, to-wit: Adams, Blaine, Box Butte, Buffalo, Cass, Chase, Cheyenne, Clay, Colfax, Custer, Dawson, Deuel, Douglas, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Harlan, Hayes, Hamilton, Hitchcock, Hooker, Howard, Jefferson, Johnson, Kearney, Lincoln, Merrick, Morrill, Knox, Nemaha, Otoe, Pawnee, Perkins, Phelps, Platte, Red Willow, Richardson, Saline, Sarpy, Scotts Bluff, Sherman, Thayer, Thomas, Valley and Webster; that the average assessed value of lands in these counties for 1922 compared with the fair,
171 cash, market value testified to by the 137 affiants is 61.9%.

Twenty-seven of the affiants residing in 14 different counties testify that the percentage of the assessed valuation of their own real estate in those counties to the fair, cash value, as of April 1, 1922, is 61.8%.

SUMMARY OF C., B. & Q. EXHIBIT 6.

The plaintiff offered and there was received and read in evidence, without objection, C., B. & Q. Exhibit "6", being the affidavit of Clifford C. Sadler who testified that with assistance of others under his direct supervistion he had checked the sales and transfers of real estate in the City of Omaha, as revealed by the records from April 1, 1921, to April 1, 1922. Attached to his affidavit and a part thereof is a detailed statement giving the grantor and grantee, with a description of every transfer, 5617 in number, for which an actual bona-fide consideration is shown, excluding those transfers by way of gift or reciting a nominal consideration only. The affiant also checked the 1922 tax assessments against each of the tracts of land thus transferred. The correct summary of this information is:

Number of transfers	5,671
Total consideration for all transfers	$21,160,679
Total assessed valuation of the 5671 transfers for 1922	$13,525,298

The percentage of the 1922 valuation for tax assessment of the 5671 tracts of land thus transferred to the consideration recited in the record for the transactions is 63.9%.

172 SUMMARY OF C., B. & Q. EXHIBIT 7.

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "7", being the affidavit of Verne Hedge, an abstracter engaged in the City of Lincoln, Nebraska

for 19 years last past in the abstracting business. This affiant testified that he, with others under his direct supervision, checked all the sales and transfers of real estate in the City of Lincoln, Lancaster County, Nebraska, during the month of March, 1922. Attached to the affidavit and a part of it is a tabulated statement showing the grantor and grantee, with a description of the property thus transferred, including only those showing an actual bona fide consideration, and excluding nominal considerations or those by way of gift. This affidavit reveals the following information:—

Total transfers	225
Consideration for all of these transfers	$648,837
Valuation of all of the 225 tracts of land thus transferred for taxation in 1922	$391,493

Percentage of the assessed valuation of the 225 tracts of land thus transferred to the actual consideration shown of record being 60.3%.

SUMMARY OF C., B. & Q. EXHIBIT 9.

The plaintiff offered and there was received and read in evidence, without objection, the affidavit of Pollock Parmelee, identified as C. B. & Q. Exhibit "9", as follows: Affiant compared the average value of lands per acre in all counties in Nebraska in 1920
173 as reported by the United States Bureau of Census and the average assessed valuation of lands per acre as reported by the State Tax Commissioner in 1922. The average value of farm lands per acre January 1, 1920, according to the United States Census is $87.91. The average assessed valuation per acre of these lands as equalized by the State Board of Equalization, in 1922, is $37.07, showing that said assessed valuation per acre is but 42.17% of the average value per acre of these lands January 1, 1920 fixed by the United States Census. The average value of farm lands for the 71 counties in Nebraska crossed by plaintiff's lines of railway, according to the United States Census as of January 1, 1920, is $98.54. The average assessed valuation per acre of these lands as equalized by the State Board of Equalization, for 1922, is $42.78, so that the assessed valuation for 1922 is but 43.41% of the average value fixed by the United States Census for January 1, 1920.

SUMMARY OF C., B. & Q. EXHIBIT 12.

Plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "12", a bulletin issued by the Department of Agriculture of the State of Nebraska March 1, 1922 containing agricultural statistics for that state and of the United States, which, amongst other things, reveals that the farm lands in Nebraska with improvements March 1, 1922 average $85 per acre as compared to the 1920 Census valuation of $87.91 per acre;
174 that the value of unimproved land March 1, 1922 is $76 per acre as compared to the Census valuation 1920 of $78.87 per acre.

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Statement of A. E. Anderson, showing corn values in Nebraska, 1916-1922 inc.

7	Chase	25	19	29	22	37	22	45	35		75	70		72	55		48	39
	Dundy	21	15	27	20	25	24	32	29		47	38		36	26		44	31
	Frontier	24	16	33	24	42	26	31	27		52	46		43	33		41	33
	Hayes	14	11	20	15	23	15	30	20		38	23		50	40		53	45
	Hitchcock	20	14	25	19	35	27	50	28		68	51		70	51		50	37
	Keith	32	26	40	30	50	31	39	29		84	62		65	47		56	41
	Lincoln	39	26	35	25	42	36	54	47		80	84		86	61		46	37
	Perkins	25	17	26	16	333	25	45	33		69	47		67	48		52	37
	Red Willow	26	20	33	20	30	22	43	30		62	52		60	46		57	31
										12.5	64	50	12	60	45	12.5	48	36
											800	625		720	540		600	450
8	Adams	100	91	102	93	105	92	109	99		133	116		123	100		111	93
	Franklin	61	42	64	48	70	59	59	46		68	60		85	59		74	62
	Furnas	37	27	36	32	50	59	48	39		60	47		64	49		63	50
	Gosper	41	28	56	43	62	57	68	67		50	38		80	46		80	63
	Harlan	48	38	50	41	53	45	64	50		79	55		76	61		73	65
	Kearney	88	65	90	78	95	78	95	85					100	90		108	100
	Phelps	69	64	73	50	82	70	90	65		115	93		88	75		89	75
	Webster	65	52	75	65	81	63	79	69		110	94		104	81		95	80
										6	90	70	6	87	69	6	88	76
											540	420		522	414		528	456
9	Clay	106	101	114	103	122	103	129	113		165	143		150	131		133	104
	Fillmore	107	95	115	97	122	100	150	132		183	143		140	113		130	117
	Gage	99	81	107	92	124	108	140	113		213	178		180	155		118	101
	Jefferson	85	75	89	73	96	79	113	83		154	141		150	140		119	87
	Johnson	106	82	98	83	143	98	147	123		175	155		168	140		122	100
	Nemaha	115	109	123	112	129	110	183	165		225	200		183	150		195	146
	Nuckolls	89	74	89	72	103	81	162	155		127	103		150	121		121	98
	Otoe	141	122	178	141	174	59	194	161		283	242		187	142		171	147
	Pawnee	98	74	102	83	117	95	125	100		180	134		150	117		137	114
	Richardson	144	114	124	115	155	135	197	155		225	200		250	225		165	140
	Saline	117	99	141	103	135	118	139	105		196	192		150	141		153	130
	Thayer	92	82	100	82	110	94	115	98		155	131		136	115		115	92
										9	182	153	9	160	135	9	136	113
											1638	1377		1440	1215		1224	1017
	State	75	60	77	63	104	85	90	75		114	99		110	85		85	76

SUMMARY OF C., B. & Q. EXHIBIT 13.

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "13", being the affidavit of A. E. Anderson, who, amongst other things, testified that during eight years last past he has been and yet is Federal Agricultural statistician for the State of Nebraska; in that capacity he receives under his supervision and direction from a list of over one thousand correspondents throughout the State of Nebraska information as to the value of lands and the improvements thereon in Nebraska; that from this information he prepared a statement as to each county in Nebraska showing the average value per acre of lands therein from 1916 to 1922, both inclusive. The statement is attached to and made a part of the affidavit. Affiant computed the average value of land in the state, without improvements, in 1922, and it is the sum of $76 per acre, and the average value per acre of lands and improvements in Nebraska, on March 1st, 1922, was $85.

The material parts of the statement are as follows:

(Here follows statement, marked side folios 175 and 175½.)

176 C. B. & Q. EXHIBIT 16.

The plaintiff offered and there was read in evidence, without objection, C. B. & Q. Exhibit "16", being the affidavit of Madge Dessert, as follows:

"I have checked assessment for 1916 as made by State Board of Equalization and Assessment for 1916 as published in Biennial report of Auditor of Public Accounts for Nebraska in December 1916, have figured said assessment to show full average assessed value per acre instead of one-fifth; that I have checked 1920, 1921 and 1922 average assessed value per acre in each county as published in Report of the Nebraska State Board of Equalization and Assessment for 1922; that figures showing average value per acre for each county for years mentioned above with average assessed value per acre for entire state are correctly shown in statement hereto attached and made a part of this affidavit."

"COMPARATIVE STATEMENT OF AVERAGE ASSESSED VALUES PER ACRE OF FARM LANDS AND IMPROVEMENTS IN NEBRASKA, 1916 TO 1922, INCLUSIVE.

County.	1916.	1920.	1921.	1922.
Adams	$56.10	84.48	72.12	71.83
Antelope	34.80	60.34	50.09	48.78
Arthur	3.30	5.13	4.35	4.23
Banner	5.80	9.48	7.30	7.06
Blaine	4.60	5.48	4.66	4.65
Boone	43.65	82.90	70.60	71.10

County.	1916.	1920.	1921.	1922.
Box Butte	6.35	10.26	8.78	9.03
Boyd	31.75	51.54	43.22	43.32
Brown	7.35	10.50	8.92	8.40
Buffalo	33.25	55.15	46.11	46.14
Burt	79.75	142.14	120.30	117.47
Butler	76.10	126.34	97.13	96.69
Cass	80.50	132.49	111.32	111.46
Cedar	60.60	114.75	97.00	94.18
Chase	6.70	14.40	12.20	12.27
Cherry	4.10	6.26	4.93	5.20
177 Cheyenne	10.50	26.27	22.30	22.86
Clay	69.45	91.25	77.69	77.74
Colfax	79.15	132.45	111.82	112.77
Cuming	82.20	143.01	123.60	120.33
Custer	15.35	24.49	20.49	20.45
Dakota	60.65	112.92	96.86	96.51
Dawes	5.85	12.08	10.31	10.45
Dawson	30.90	48.57	41.14	40.18
Deuel	9.50	30.72	26.16	25.06
Dixon	55.65	99.00	82.10	80.27
Dodge	81.30	140.32	119.36	118.73
Douglas	97.55	123.85	144.65	144.61
Dundy	5.70	12.32	10.47	10.47
Fillmore	66.50	99.51	85.26	85.31
Franklin	34.20	46.53	38.84	38.39
Frontier	15.85	19.98	17.04	16.69
Furnas	24.85	34.56	29.72	29.63
Gage	69.00	91.35	79.91	80.19
Garden	3.80	11.49	9.81	9.22
Garfield	8.10	15.91	13.23	12.10
Gosper	22.50	33.82	28.63	28.86
Grant	3.50	4.34	3.60	3.82
Greeley	38.80	48.82	42.29	38.44
Hall	54.35	71.69	61.55	61.38
Hamilton	78.70	101.25	86.68	86.73
Harlan	25.90	38.03	32.00	33.06
Hayes	6.60	14.82	12.87	12.55
Hitchcock	8.20	21.23	18.22	18.48
Holt	11.20	18.63	16.24	15.32
Hooker	3.50	6.79	3.99	3.70
Howard	40.10	53.62	45.71	45.58
Jefferson	61.30	81.33	69.67	70.11
Johnson	66.20	95.60	85.97	85.55
Kearney	44.65	60.36	50.93	50.47
Keith	7.15	16.61	13.48	12.53
Keyapaha	6.80	12.65	10.38	9.58
Kimball	6.30	21.11	17.37	17.88
Knox	36.15	62.63	53.25	50.65
Lancaster	77.10	115.69	100.40	101.22
Lincoln	8.50	15.70	10.07	10.09

County.	1916.	1920.	1921.	1922.
Logan	5.85	9.82	8.45	8.24
Loup	6.00	9.17	7.73	6.62
Madison	53.00	102.54	86.72	86.23
McPherson	3.05	6.79	5.82	3.52
Merrick	51.20	73.64	61.70	61.40
Morrill	7.00	11.68	9.90	10.10
Nance	49.80	79.64	64.63	65.15
Nemaha	75.15	119.07	95.38	94.88
Nuckolls	51.50	68.03	58.62	59.52
Otoe	82.40	124.40	105.58	104.09
Pawnee	65.50	68.96	69.21	69.23
Perkins	8.85	21.64	16.25	15.23
Phelps	36.50	59.32	49.42	49.45
Pierce	51.00	90.42	76.78	72.30
Platte	72.80	116.98	99.20	98.45
Polk	78.55	113.61	96.99	97.41
Red Willow	16.75	25.20	21.29	21.37
178 Richardson	68.30	106.34	92.11	91.95
Rock	7.50	10.68	9.05	8.22
Saline	75.90	109.81	93.41	93.57
Sarpy	80.00	123.85	102.71	104.44
Saunders	78.65	128.59	104.26	104.07
Scotts Bluff	24.85	44.00	37.69	35.55
Seward	76.85	110.66	94.17	94.30
Sheridan	5.50	8.63	7.34	7.15
Sherman	30.60	41.46	35.58	35.13
Sioux	3.70	8.71	6.91	6.4*a*
Stanton	66.20	115.90	98.16	92.84
Thayer	56.50	72.43	62.00	62.57
Thomas	3.45	5.70	4.72	3.27
Thurston	77.10	134.81	34.46	91.52
Valley	32.60	47.65	39.51	38.94
Washington	83.80	148.00	125.86	123.83
Wayne	73.15	133.78	.....	105.85
Webster	46.95	52.83	44.85	44.65
Wheeler	8.30	15.37	13.20	12.10
York	80.30	108.27	92.71	92.17
State Average	31.25	47.07	39.47	37.07

Increase 1922 over 1916—$5.82 per acre or 18%.

179 SUMMARY OF C., B. & Q. EXHIBIT 17.

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "17," being an affidavit of E. A. Roth, for 38 years last past a resident and owner of real estate in Phelps County, Nebraska, where for 30 years last past he has been engaged in the real estate business; that he is well acquainted and informed as to values of lands and has personally investigated the

lands transferred by warranty deed in Phelps County during the period from April 1, 1921 to March 31, 1922 so as to acquaint himself with actual sale prices, location and market value of the lands that in his opinion, arrived at from an actual observation and knowledge of these lands, the market value thereof on March 31, 1922 was on the average 100% of the value evidenced by the deeds therefor, and in affiant's opinion the average market value of lands with improvements, in Phelps County, Nebraska March 31, 1922 was over $76.10 per acre; that affiant checked the valuations of the lands with the assessed value of these lands in the years 1920, 1921 and 1922. The attached recapitulation is made a part of the affidavit, and is as follows:

"Phelps County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Filed During Period April 1, 1921, to April 1, 1922, and the Assessment for the Years 1920, 1921, and 1922 of the Lands Transferred by Those Deeds

Number of transfers	44
" " Acres transferred	6,880
Consideration shown by deeds	$523,608.00

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Assessed value same land 1920 (1/5)	$59,396.00
" " " " 1921	$286,315.00
" " " " 1922	$275,330.00
Per Cent of 1920 assessment to sale value	66%
Per Cent of 1921 " " " "	54%
" " " 1922 " " " "	52%
Average sale price per acre	$76.10
Average Assessed value per acre 1920 1/5	$10.08
" " " " " 1921	$41.61
" " " " " 1922	$40.00

SUMMARY OF C., B. & Q. EXHIBIT 18.

The plaintiff offered and there was received and read in evidence C. B. & Q. Exhibit "18," the affidavit of A. R. Morrison, for 57 years last past resident and owner of real estate in Sarpy County Nebraska. This affidavit gives the same information as the affidavit of Roth last preceding but is confined to Sarpy County. Affiant fixes the average market value of lands with improvements in Sarpy County March 31, 1922 at $188 per acre. Recapitulation of the tabulations attached to this affidavit and made a part of same as follows:

"Sarpy County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Filed During Period April 1, 1921, to April 1, 1922, and the Assessment for the Years 1920, 1921, and 1922 of the Lands Transferred by Those Deeds.

Number of transfers	33
Number of acres transferred	3,738
Consideration shown by deeds	$702,765.00
Assessed value same land 1920	$73,220.00
" " " " 1921	$320,662.00
" " " " 1922	$348,771.00
Per cent 1920 assessment to sale value	52%
" " 1921 " " " "	45%
" " 1922 " " " "	49%
Average sale price per acre	$188.00
Average assessed price 1920 per acre	$19.62
" " " 1921 " "	$85.78
" " " 1922 " "	$93.30"

SUMMARY OF C., B. & Q. EXHIBIT 19.

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "19" being the affidavit of Jacob Hatchr, for forty years last past a resident and owner of real estate in Red Willow County, Nebraska. The substance of the affidavit is the same as of the affidavit of Roth, but is confined to real estate in Red Willow County, Nebraska. Affiant fixes the average market value of lands, with improvements, in that County at $45.20 per acre March 21, 1922. A correct recapitulation of the tabulated statement is appended to the affidavit and is as follows:

"Red Willow County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Filed During Period April 1, 1921, to April 1, 1922, and the Assessment for the Years 1920, 1921, and 1922 of the Lands Transferred by Those Deeds.

Number of transfers	65
Number of acres sold	12,666
Consideration as shown by deeds	$572,520.00
Assessed value same land 1920	$63,422.00
" " " " 1921	$282,027.00
" " " " 1922	$256,886.00
Per cent of 1920 assessment to sale value	55%
" " " 1921 " " " "	49%
" " " 1922 " " " "	45%
Average sale price per acre	$45.20
Average assessed value 1920 per acre	$5.00
" " " 1921 " "	$22.77
" " " 1922 " "	$20.28

Summary of C., B. & Q. Exhibit 20.

The plaintiff offered and there was received in evidence, without objection, C. B. & Q. Exhibit "20," the affidavit of J. P. Falter, a resident for 38 years last past and owner of real estate in Cass County, Nebraska, where he has been engaged in the real estate business for 20 years last past. Affiant testifies that the average market value of lands, with improvements, in Cass County, Nebraska, March 31, 1922 was $175 per acre and in all other respects the affidavit is identical with the affidavit of Roth, C. B. & Q. Exhibit "17." A correct summary of the information secured by affiant Falter with respect to the matters testified to in his affidavit is as follows:

183 "Cass County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Filed During Period of April 1, 1921, to April 1, 1922, and the Assessment for the Years 1920, 1921, and 1922 of the Lands Transferred by Those Deeds.

Number of transfers	39
Number of acres sold	4,120
Consideration as shown by deeds	$748,350.00
Assessed value same lands 1920	$99,794.00
" " " " 1921	$409,250.00
" " " " 1922	$411,430.00
Per Cent of 1920 assessment to sale value	66%
" " " 1921 " " " "	54%
" " " 1922 " " " "	54%
Average sale price per acre	$181.63
Average assessed price per acre 1920	$24.22
" " " " " 1921	$99.33
" " " " " 1922	$99.86

Summary of C. B. & Q. Exhibit 21.

The plaintiff then offered in evidence C. B. & Q. Exhibit "21" consisting of 20 affidavits, which were received and read without objection. The affidavit of Pollock Parmele is a summary of the facts testified to by the remaining 19 affiants, all of whom were the owners of real estate in Cass County, Nebraska, acquired prior to January 1, 1922, and all of them testify to the actual consideration paid and the actual fair value of that land April 1, 1922.

184 The correct summary of that information is testified to by the affiant Parmele as follows: "I, Pollock Parmele, do state on oath that I checked transfers by warranty deed recorded in Cass County, Nebraska, during period April 1st, 1921, to April 1st, 1922, showing parties, consideration, acres, description, and assessed value; that correct statement showing such information as well as comparative recapitulation thereof showing average sale price per acre of $181.63 and average assessed value in 1922 of $99.86 per acre is attached and made a part of this affidavit; that grantees in most instances, and grantors in cases where grantee could not be found, have been interviewed by myself or by others at my direction and

affidavits secured from parties to 19 of such transfers; that it was impossible to locate some of the parties to transfers and the others refused to make any affidavit stating as reason that it might affect their tax assessment; that of those secured the total consideration 2,081 acres shown was $374,020.00 and the fair cash market value as of April 1st, 1922, was $371,825.00 as sworn to in affidavits attached, which actual market value is 99.4% of sale consideration, or an average value of $178.67 per acre; that diagram showing location of lands covered by affidavits is hereto attached.

Further, that similar affidavits have been secured from 16 grantees of land sold during same period in four counties of Gage, Nemaha, Richardson and Johnson for comparison, which affidavits
185 show fair cash market value as of April 1st, 1922, to be 100% of or the same as sale consideration of record. Affidavits hereto attached."

C., B. & Q. Exhibit 25.

The plaintiff offered and there was received and read in evidence C. B. & Q. Exhibit "25," being the affidavit of R. D. Pollard, as follows:

"R. D. Pollard being first duly sworn deposes and says that he has given other affidavits in these proceedings.

Affiant furthers says that on Pages 160 and 161 of the Report of the State Tax Commissioner of Nebraska for the years 1921-1922 the total amount of intangible property, which does not include corporate franchises, returned for taxation and valued in 1922 at 25 per cent of its actual value is but $35,316,423.00. One hundred per cent value of this property, therefore, is $141,265,692.00.

Affiant further says that the Bankers Directory of the United States of America for July, 1922, Pages 985 to 1040, inclusive, reveals the deposits at that time in the banks in the State of Nebraska and that the aggregate sum of those deposits in that month is $432,720,390.00, so that the percentage of value of the intangible property listed for taxation in the State of Nebraska for 1922, which includes not only bank deposits but promissory notes and choses in action, was but 32.7 per cent of the actual value of the bank deposits in the State during that year.

Affiant further says that it appears on Pages 6 and 7 of the Agricultural Bulletin of the United States Census of 1920 that in the State of Nebraska animals of all species on the farms in the
186 State of Nebraska were of the value of $326,002,105.

Affiant further says that as appears on Pages 120, 132 and 133 of the Report of the State Tax Commissioner for the State of Nebraska for 1921-1922 all animals in the State of Nebraska were valued for taxation in 1922 at but $146,562,301 or but 44.95 per cent of the census value of animals on farms solely in said State in 1920."

187 Summary of Plaintiff's Joint Exhibit 2.

From the evidence adduced at this hearing by the Chicago & Northwestern Railway Company, the plaintiff Chicago, Burlington

& Quincy Railroad Company adduced and there was read in evidence, without objection, plaintiff's joint Exhibit 2, the affidavit of T. A. Polleys, which, amongst other things, shows that he is Tax Commissioner of the Chicago & Northwestern Railway Company since 1903 continuously, and also Tax Commissioner of the Chicago, St. Paul, Minneapolis & Omaha Railway Company; in that capacity for nearly 20 years last past have made a thorough study of land values in Iowa, Nebraska, South Dakota and Wisconsin during the past 7 years; research based in large part upon the so-called assessment ratio method for many years employed by the Tax Commissions of Wisconsin and Minnesota to ascertain the approximate true value of real estate; this ratio method has been used by the State Board of Equalization and Assessment for Nebraska at times in the equalization of real estate assessments, particularly with respect to real estate equalization made in 1920. In studies in the State of Nebraska affiant personally gathered from the public records many thousand transfers of Nebraska real estate and posted against each the assessed value of the real estate under the assessment last preceding the date of transfer. Have examined and studied a still larger number of Nebraska real estate transfers and assessments gathered by other representatives of the Tax Departments of the two railroads above mentioned and under the personal direction and supervision of affiant. The Nebraska studies concerned both real and urban real estate and affiant verily believes he is well advised as to the true value of Nebraska real estate in those counties crossed by the lines of the Chicago, St. Paul, Minneapolis & Omaha Railway Company and the Chicago & Northwestern Railway Company, for the year 1922, and continuously for a considerable number of years prior thereto; that there is a close correspondence and agreement between the stated consideration in recorded deeds of Nebraska acre property and the considerations indicated by the revenue stamps affixed to said deeds and the prior incumbrances recited therein. Attached to this affidavit are three summarized exhibits, A, B and C. Affiant states that the land sales therein referred to are widely distributed throughout the respective counties and generally speaking fairly represent all general localities and all qualities of soil and variations in value; that on the whole the average intrinsic quality of the lands therein referred to is somewhat below the average intrinsic quality of the entire body of lands in the group of 37 counties considered as a unit; that it appears therefrom that nearly 500,000 acres of land sold during the calendar year 1921 were assessed at only $46.51 per acre in 1922, whereas the entire body of assessable lands in those 37 counties considered as a group was assessed at an average of $49.23 per acre in the calendar year 1922. Over 30,000 old were assessed at only $44.50 per acre in 1922, whereas the entire body of lands in the 37 counties considered as a group were assessed at $49.23.

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These Exhibits A, B and C are as follows:

(Here follow exhibits marked side folio pages 189, 190, and 191.)

Exhibit A to Polley's Affidavit

RECAPITULATION OF LAND SALES from January 1, 1921 to November 192
crossed by the C. & N. W. and C. St.

County.	Transfers.	Acres Sold.	Consideration		
			Total.	Per Acre.	
1.	2.	3.	4.	5.	
Adams	76	11,060	1,181,590	106.83	
Antelope	167	27,963	2,389,613	85.43	1
Boone	117	21,128	2,830,496	133.97	1
Boyd	126	24,696	1,561,879	63.24	
Brown	136	56,513	909,859	16.10	
Burt	88	14,269	2,673,027	187.33	1
Butler	83	10,361	1,771,360	170.96	
Cedar	120	18,398	2,682,565	145.81	1
Cherry	202	101,900	1,091,081	10.71	
Clay	103	14,023	1,774,015	126.51	1
Colfax	59	6,725	1,344,596	199.94	
Cuming	92	10,744	1,937,519	180.33	1
Dakota	36	4,843	719,082	148.48	
Dawes	46	17,046	457,100	26.82	
Dixon	88	13,871	1,859,380	134.05	
Dodge	70	6,968	1,618,120	232.22	
Douglas	69	4,752	1,291,002	271.68	
Fillmore	114	15,727	1,985,782	126.27	1,
Hamilton	101	10,477	1,537,375	146.74	
Holt	288	86,105	3,391,151	39.38	1,
Knox	168	24,657	2,245,795	91.08	1,
Lancaster	173	20,808	3,476,322	167.07	2,
Madison	112	15,934	2,536,245	159.17	1,
Nuckolls	99	14,393	1,574,934	109.42	
Pierce	97	13,923	1,763,123	126.66	
Platte	108	13,378	2,160,310	161.48	1,
Rock	74	39,623	645,558	16.29	
Saunders	118	14,646	2,723,594	185.96	1,
Seward	113	14,040	2,170,783	154.61	1,
Sheridan	104	37,049	870,803	23.50	
Sioux	83	31,810	679,353	21.36	
Stanton	103	17,500	2,570,572	146.89	1,
Thayer	159	22,436	2,470,830	110.13	1,
Thurston	157	11,479	1,488,516	129.67	
Washington	63	6,084	1,099,684	180.75	
Wayne	68	10,266	3,000,331	194.82	1,
York	151	16,852	2,714,749	161.09	2,
37 Counties	4,131	802,347	68,198,694	85.00	36,

t A & Polley Affidavit

A.

OF LAND SALES from January 1, 1921 to November 1922, and the 1922 equalized assessment against same, in 37 Nebraska counties crossed by the C. & N. W. and C. St. P. M. & O. Railways.

Transfers.	Acres Sold.	Consideration Total.	Consideration Per Acre.	1922 Equalized Assessment Total.	1922 Equalized Assessment Per Acre.	Ratio.	1922 Av'g. Equal. Ass'mt. per Acre, Entire County	Est'd. True Value per Acre, Entire County.
2.	3.	4.	5.	6.	7.	8.	9.	10.
		$		$	$	%	$	$
76	11,060	1,181,590	106.83	748,840	67.70	63.37%	71.83	113.35
167	27,963	2,389,613	85.43	1,285,506	45.97	53.81%	48.78	90.65
117	21,128	2,830,496	133.97	1,456,855	68.95	51.46%	71.10	138.17
126	24,696	1,561,879	63.24	944,508	38.25	60.48%	43.32	71.63
136	56,513	909,859	16.10	422,630	7.47	46.45%	8.40	18.08
88	14,269	2,673,027	187.33	1,459,894	102.31	54.62%	117.47	215.07
83	10,361	1,771,360	170.96	875,838	84.53	49.45%	96.69	195.53
120	18,398	2,682,565	145.81	1,646,652	89.50	61.38%	94.18	153.44
202	101,800	1,091,081	10.71	469,819	4.61	43.04%	4.93	11.46
103	14,023	1,774,015	126.51	1,010,975	72.09	56.98%	77.74	136.44
59	6,725	1,344,596	199.94	771,245	114.68	57.35%	112.77	196.64
92	10,744	1,937,519	180.33	1,260,705	117.34	65.07%	120.33	184.92
36	4,843	719,082	148.48	407,370	84.12	56.65%	96.51	170.37
46	17,046	457,100	26.82	193,410	11.35	41.95%	10.31	24.58
88	13,871	1,859,380	134.05	981,850	70.78	52.80%	80.27	152.03
70	6,968	1,618,120	232.22	797,310	114.42	49.27%	118.73	240.98
69	4,752	1,291,002	271.68	686,337	144.43	53.16%	144.64	272.08
114	15,727	1,985,782	126.27	1,270,280	80.77	63.97%	85.31	133.36
101	10,477	1,537,375	146.74	842,576	80.42	54.81%	86.73	158.24
288	86,105	3,391,151	39.38	1,401,585	16.28	41.34%	15.32	37.06
168	24,657	2,245,795	91.08	1,235,148	49.22	54.04%	50.65	93.73
173	20,808	3,476,322	167.07	2,070,675	99.51	59.56%	101.22	169.95
112	15,934	2,536,245	159.17	1,264,408	79.35	49.85%	86.23	172.98
99	14,393	1,574,934	109.42	802,055	55.73	50.93%	59.52	116.87
97	13,923	1,763,123	126.66	863,270	62.00	48.94%	70.75	144.56
108	13,378	2,160,310	161.48	1,208,757	90.35	55.95%	98.45	175.96
74	39,623	645,558	16.29	248,235	6.26	38.43%	8.22	21.39
118	14,646	2,723,594	185.96	1,427,342	97.46	52.41%	104.07	198.57
113	14,040	2,170,783	154.61	1,133,753	80.75	52.23%	94.30	180.55
104	37,049	870,803	23.50	337,069	9.10	38.72%	7.15	18.47
83	31,810	679,353	21.36	319,542	10.05	47.05%	6.42	13.65
103	17,500	2,570,572	146.89	1,492,365	85.28	58.06%	92.84	159.90
159	22,436	2,470,830	110.13	1,227,425	54.71	49.66%	62.57	126.00
157	11,479	1,488,516	129.67	905,900	79.01	60.93%	91.52	150.21
63	6,064	1,099,684	180.75	611,576	100.52	55.61%	123.83	222.68
68	10,266	2,000,331	194.82	1,063,666	103.74	53.19%	105.85	199.02
151	16,852	2,714,749	161.09	1,543,372	91.57	57.09%	92.17	161.45
4,131	802,347	68,198,694	85.00	36,696,673	45.74	53.82%	49.23	91.48

Compiled by Tax Department of C&NWRyCo., Chicago, Ill. November 20, 1922. #969.

Exhibit B to Polley's Affidavit

B.

RECAPITULATION OF LAND SALES from January to December 1921 inclusive, and the 1922 equalized assessment against same in 37 Nebraska counties crossed by the C. & N. W. and C. St. P. M. & O. Railways.

County.	Transfers.	Acres Sold.	Consideration Total.	Consideration Per Acre.	1922 Equalized Assessment Total.	1922 Equalized Assessment Per Acre.	Ratio.	1922 Av'g. Equal. Ass'mt. per Acre, Entire County	Est'd. True Value per Acre, Entire County.
1.	2.	3.	$ 4.	$ 5.	$ 6.	$ 7.	8.	$ 9.	$ 10.
Adams	48	6,622	727,165	109.81	426,711	64.44	58.69%	71.83	122.39
Antelope	113	19,592	1,684,965	86.24	898,366	45.85	53.17%	48.78	91.74
Boone	76	12,957	1,894,867	146.24	875,955	67.60	46.26%	71.10	153.70
Boyd	76	14,820	1,004,794	67.79	574,505	38.79	57.22%	43.32	75.71
Brown	81	30,055	503,649	16.76	236,730	7.88	47.00%	8.40	17.87
Burt	59	9,958	1,900,326	190.83	966,604	97.07	50.87%	117.47	230.93
Butler	52	7,366	1,387,736	188.40	653,793	88.76	47.12%	96.69	205.20
Cedar	61	11,594	1,810,339	156.14	1,029,870	88.83	56.88%	94.18	165.58
Cherry	134	70,557	800,989	11.35	312,612	4.43	39.04%	4.93	12.63
Clay	68	9,533	1,238,233	129.89	679,995	71.33	54.92%	77.74	141.55
Colfax	37	4,055	962,796	237.43	495,480	122.19	51.46%	112.77	219.15
Cuming	52	5,559	1,101,623	198.17	662,150	119.11	60.10%	120.33	200.22
Dakota	23	3,273	533,135	162.89	273,275	83.49	51.26%	96.51	188.28
Dawes	26	8,447	210,610	24.93	78,190	9.26	37.15%	10.31	27.76
Dixon	46	7,159	980,578	137.14	495,100	69.24	50.49%	80.27	158.98
Dodge	52	5,429	1,323,270	243.74	620,180	114.23	46.87%	118.13	253.32
Douglas	40	3,164	883,474	279.23	444,090	140.36	50.27%	144.64	287.73
Fillmore	67	9,498	1,298,196	136.68	769,440	81.01	59.27%	85.31	143.94
Hamilton	51	5,107	810,680	158.74	415,410	81.34	51.24%	86.13	169.27
Holt	189	47,845	2,144,387	44.82	767,170	16.03	35.76%	15.32	42.84
Knox	94	14,198	1,323,156	93.19	690,542	48.64	52.19%	50.65	97.05
Lancaster	116	14,470	2,507,147	173.26	1,473,200	101.81	58.76%	101.22	172.26
Madison	72	10,709	1,860,777	173.76	871,631	81.39	46.84%	86.23	184.10
Nuckolls	59	8,691	959,510	110.40	467,780	53.82	48.75%	59.52	122.10
Pierce	53	7,507	1,094,268	145.77	471,215	62.77	43.06%	70.75	164.31
Platte	52	6,691	1,128,712	168.69	574,125	85.81	50.87%	98.45	193.54
Rock	42	16,543	355,698	21.50	121,810	7.36	34.23%	8.22	24.01
Saunders	67	9,015	1,772,268	196.59	865,740	96.03	48.85%	104.07	213.04
Seward	68	9,210	1,541,800	167.40	766,088	83.18	49.69%	94.30	189.78
Sheridan	66	24,674	575,569	23.33	224,129	9.08	38.93%	7.15	18.37
Sioux	53	23,313	504,184	21.63	239,659	10.28	47.53%	6.42	13.51
Stanton	63	10,779	1,708,212	158.48	968,085	89.81	56.31%	92.84	164.87
Thayer	116	15,733	1,845,520	117.30	886,625	56.35	48.04%	62.57	130.25
Thurston	100	7,817	1,043,587	133.50	587,800	75.20	56.32%	91.52	162.50
Washington	50	4,719	868,435	184.03	468,264	99.23	53.92%	123.83	229.66
Wayne	38	5,195	1,135,824	218.64	509,522	98.08	44.86%	105.85	235.96
York	105	11,947	2,029,097	169.84	1,103,712	92.38	54.39%	92.17	169.46
37 Counties	2,575	493,792	45,455,376	92.05	22,965,953	46.51	50.53%	49.23	97.46

Compiled by Tax Department of C. & N. W. Ry., Co., Chicago, Illinois. - November 20, 1922.

#970.

Eplebt C + Polleys Affidavit

C

RECAPITULATION OF LAND SALES from January to November 1922, and the 1922 equalized assessment against same in 37 Nebraska counties crossed by the C. & N. W. and C. St. P. M. & O. Railways.

County.	Transfers.	Acres Sold.	Consideration		1922 Equalized Assessment		Ratio.	1922 Av'g. Equal. Ass'mt. per Acre. Entire County.	Est'd. True Value per Acre, Entire County.
			Total.	Per Acre.	Total.	Per Acre.			
1.	2.	3.	$ 4.	$ 5.	$ 6.	$ 7.	8.	$ 9.	$ 10.
Adams	28	4,438	454,425	102.39	322,129	72.58	70.89%	71.83	101.33
Antelope	54	8,371	704,648	84.18	387,140	46.25	54.94%	48.78	88.79
Boone	41	8,171	935,629	114.51	580,900	71.09	62.08%	71.10	114.53
Boyd	50	9,876	557,285	56.43	369,603	37.42	66.31%	43.32	65.33
Brown	55	26,458	406,210	15.35	185,900	7.03	45.76%	8.40	18.36
Burt	29	4,311	772,701	179.24	493,290	114.43	63.85%	117.47	183.98
Butler	21	2,995	383,624	128.09	222,045	74.14	57.88%	96.69	167.05
Cedar	59	6,804	872,226	128.19	616,782	90.65	70.72%	94.18	133.18
Cherry	68	31,243	290,092	9.29	157,207	5.03	54.15%	4.93	9.11
Clay	35	4,496	535,782	119.33	330,980	73.72	61.78%	77.74	125.83
Colfax	22	2,670	381,800	143.00	275,765	103.28	72.23%	112.77	156.13
Cuming	40	5,185	835,896	161.21	598,555	115.44	71.61%	120.33	168.04
Dakota	13	1,570	185,947	118.44	134,095	85.41	72.12%	96.51	133.82
Dawes	20	8,599	246,490	28.67	115,220	13.40	46.74%	10.31	22.06
Dixon	42	6,721	878,802	130.75	486,750	72.42	55.39%	80.27	144.92
Dodge	18	1,539	294,850	191.59	177,130	115.09	60.08%	118.73	197.62
Douglas	29	1,588	407,528	256.63	242,247	152.55	59.44%	144.64	243.34
Fillmore	47	6,229	687,586	110.39	500,840	80.40	72.83%	85.31	117.14
Hamilton	50	5,370	726,695	135.32	427,166	79.55	58.79%	86.73	147.53
Holt	99	38,260	1,246,764	32.59	634,415	16.58	50.87%	15.32	30.12
Knox	74	10,459	922,639	88.21	544,506	52.07	59.03%	50.65	85.80
Lancaster	57	6,338	969,175	152.92	597,475	94.27	61.65%	101.22	164.18
Madison	40	5,225	675,468	129.28	392,777	75.17	58.15%	86.23	148.30
Nuckolls	40	5,702	615,424	107.93	334,275	58.62	54.32%	59.52	109.58
Pierce	44	6,416	669,455	104.34	392,055	61.11	58.57%	70.75	120.80
Platte	56	6,687	1,031,598	154.27	634,632	94.90	61.52%	98.45	160.03
Rock	32	23,080	289,860	12.56	126,425	5.48	43.63%	8.22	18.84
Saunders	51	5,631	951,326	168.94	561,602	99.73	59.03%	104.07	176.31
Seward	45	4,830	628,983	130.22	367,665	76.12	58.46%	94.30	161.31
Sheridan	38	12,375	295,234	23.86	112,940	9.13	38.27%	7.15	18.64
Sioux	30	8,497	175,169	20.62	79,883	9.40	45.60%	6.42	14.08
Stanton	40	6,721	862,360	128.31	524,280	78.01	60.80%	92.84	152.70
Thayer	43	6,703	625,310	93.29	340,800	50.84	54.50%	62.57	114.81
Thurston	57	3,662	444,929	121.50	319,100	87.14	71.72%	91.52	127.61
Washington	13	1,365	231,250	169.41	143,312	104.99	61.97%	123.83	199.83
Wayne	30	5,071	864,507	170.48	554,474	109.34	64.14%	105.85	165.03
York	46	4,905	685,652	139.79	446,260	90.98	65.08%	92.17	141.63
37 Counties	1,556	308,555	22,743,319	73.71	13,730,720	44.50	60.37%	49.23	81.55

#971.

Compiled by Tax Department of C. & N. W. Ry. Co., Chicago, Illinois. - November 20, 1922.

192 SUMMARY OF C., B. & Q. EXHIBIT 5.

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "5," consisting of 12 affidavits of assessors, 11 of which are correctly classified as the County Assessor in five counties, two Precinct Assessors, and four former County Tax Assessors in the State of Nebraska. A correct summary of the contents of those affidavits is revealed by the affidavit of Charles C. Parmele attached which is, in substance, as follows: That he interviewed or caused to be interviewed the remaining affiants; that a fair consideration of the statements in those affidavits in connection with the average assessed value of lands in the counties where such asses-ors resided and of the fair market value of the lands therein, as stated by these asses-ors, is that the assessed value of the lands was but 67% of the fair market value; that one F. N. Slawon, County Assessor of Cheyenne County, Nebraska, stated that he assessed lands in that county, in 1922, at 50% of their fair value but refused to make affidavit. The County Assessor of Kimball County, Nebraska, stated he assessed lands in that county, in 1922, at 50% of the fair market value but refused to make affidavit. That John M. Miles, County Assessor of Gosper County, Nebraska, stated he assessed lands in that county, in 1922, at from two-thirds to three-fourths of the actual market value but refused to make affidavit. A. M. Clark, County Assessor of Adams County, Nebraska, stated that at a meeting of County Assessors called at Grand Island
193 in the spring of 1922 Mr. W. E. Osborne stated, with respect to the assessment of lands for 1922, that if a farm was worth $125 actual value per acre the assessment should be $90 to $95 per acre, which would be about 70% or 75% of the actual market value. The assessor refused to make an affidavit to this effect. Several of the affiants stated that it was their intention to assess real estate at less than its market value because of his understanding with the State Tax Commissioner and local County Boards and for the purpose of uniform valuation.

SUMMARY OF C., B. & Q. EXHIBIT 10.

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "10," consisting of 7 affidavits from precinct assessors in five different counties in Nebraska, with respect to the assessed valuations made by them of real estate in their precincts, in some instances in the years 1917 to 1920 inclusive, and in others 1920 to 1922. All of these affiants testify that it was their intention to assess real estate in their precincts at less than its fair cash value. Six of the affiants state that they so valued property for taxation because of an understanding with the State Tax Commissioner, and five of them testify that they had an understanding with the County Boards with respect to such assessment, and six of them testify that such assessments were made for the purpose of uniform valuation; one of them does not testify to any understanding with the

State Tax Commissioner or Local Board, and one of them
194 adds: "But my assessments were made by following my own judgment as to what was fair in making assessments."

The affiant, Parmele, summarizes the other affidavits in substance as follows: That the average percentage of tax assessment to fair market value given by six of the seven foregoing affiants is 72% and six of the seven state it was their intention to uniformly assess at a certain percentage below actual value. The assessor in Richardson County stated that he assessed at 85% of, or 15% less than 1920 assessed valuation.

Summary of C., B. & Q. Exhibit 15.

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "15," the affidavit of O. E. Bernecker, County Assessor in Seward County, Nebraska, from 1908 to 1912 inclusive, and Secretary of the State Board of Equalization and Assessment in Nebraska during 1915 to 1918, both inclusive; that in December, 1915, his printed instructions to the County Assessors of the State of Nebraska, amongst other things, advised them: "The basis of actual assessed value agreed upon is 75 per cent of sales values taken all over the state. If this is done, we will have an assessed value of which you all can be proud. The State Board of Equalization & Assessment will assist you through their secretary whenever possible."

In February, 1916, the affiant, as Secretary of the State Board of Equalization sent another circular to the County Assessors in Nebraska, and also a tabulation prepared by the Secretary and issued by the State Board as follows:

(Here follows tabulation marked side folio page 195.)

196 The affiant also stated that while it was his intention, as Secretary of the State Board, to require County Assessors to value lands for taxation at 75% of their value, that lands were not assessed at to exceed 70% of their actual value. "And that it was the intention of myself, as Secretary of the State Board in conjunction with County Assessors, to assess on this basis for entire state, which intention and act Members of the Nebraska State Board of Equalization and Assessment had knowledge of."

C., B. & Q. Exhibit 22.

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "22," being an affidavit of E. F. Morgan, which is as follows: "I, E. F. Morgan, on oath depose and say that I am 43 years of age. That from 1897 to 1909 I was employed in the Operating and Accounting Departments of Railroads, and from 1909 to June 15th, 1920, I was employed as Examiner of Accounts and District Accountant for the Interstate Commerce Commission, and since said time have been in the employ of the plaintiff as Assistant Auditor. That in my particular jurisdic-

tion I have supervision of the compilation of various reports to State Commissions and State Tax Boards. Also, within my jurisdiction is all of the valuation accounting of plaintiff with the Interstate Commerce Commission. That in determining the valuation of plaintiff's system of railroad I am advised that the formula most frequently approved by the courts is the total market value of its out-
197 standing capital stock and bonds, and that is the method which is used and considered by all accountants in determining the value of any railroad system, and is the method which I use in ascertaining the value of plaintiff's property first given herein.

1. The total outstanding capital stock of the plaintiff Railroad Company as of December 31st, 1921, was $170,839,100.00. As the capital stock of the plaintiff is not regularly quoted on the Stock Exchange, the few shares occasionally sold are not a true index of the value of all the shares. The value thereof as indicated by its books as of that date was $348,136,397.00, which without doubt is considerably in excess of the actual market value.

The market value on March 31, 1922, of the outstanding bonds of the Company as of December 31st, 1921, based on New York Stock Exchange quotations was $149,690,863.00. Adding this amount to the book value of the capital stock ($348,136,397.00) gives a system value of the property of $497,827,260.00. Included in this total system value is the value of credits, investments in securities and other property situated in other States to the amount of $73,677,476.14, as set out in Paragraph 12 of the plaintiff's petition in this case, which have no relation to the operation of the railroad in Nebraska, the value therein or the rights exercised in the State of Nebraska by this Company. Deducting this amount ($73,677,-
476.14) from the total value of capital stock and bonds, $497,-
198 827,260.00 leaves $424,149,783.86 of which 22.56% or $95,-
687,091.24 is assignable to the State of Nebraska on the following approved formula:

Nebraska proportion of system.	Five-year average, 1917 to 1921, inclusive.
All track mileage	26.63
Car and locomotive mileage	21.15
Tons and passengers one mile	18.85
Gross Operating Revenues	23.65
Average of the four	22.56

The foregoing is the method which I believe should be used in ascertaining the value of plaintiff's property for the purpose of taxation, and which makes an average of $33,438.00 per mile of railway in the State of Nebraska.

While the book value of the capital stock, $348,136,397.00, is used in the above compilation, the U. S. Bureau of Internal Revenue placed as a "fair value" $270,000,000.00 thereon as of December 31, 1921, for the purpose of determining the Federal Capital Stock tax to be collected from and paid by the plaintiff.

Affiant further says that other formulas sometimes used, but of which affiant does not approve in fixing values of railroads for taxation purposes, and to aid in ascertaining value of plaintiff's system by other theories, are given as follows:

2. If the percentage shown above 22.56% be applied to the
199 system 'Investment in Road and Equipment Account' of the plaintiff Railroad Company as of December 31st, 1921, which was $515,760,467.89, it would give $116,355,563.56 assignable to the State of Nebraska.

3. As of July 1, 1913, the Nebraska State Railway Commission placed a value of $104,994,348.00 on the property of the Chicago, Burlington & Quincy Railroad Company. From that date of December 31, 1921, the company has expended $10,388,405.11 for extensions and additions and betterments—road in that State. It also expended in that period the sum of $35,423,661.63 for equipment of which the Nebraska proportion is $7,398,708.32 based on the proportion the Nebraska mileage for each class of equipment for the period bears to the System mileage. The sum of the three items $104,994,348.00, $10,388,405.11 and $7,398,708.32 is $122,781,461.43. This figure does not exclude anything for depreciation since July 1, 1913, on the property in existence as of that date or on that acquired or constructed since that time.

4. The average net railway operating income for the Chicago, Burlington & Quincy Railroad Company in the State of Nebraska for the five years ended December 31, 1921, was $6,982,743.00.

This figure capitalized at 7% would amount to $99,782,043.00.

The values determined by the foregoing four formulas produce an average value for Nebraska of $108,651,522, or $37,969.00 per mile.

200 Affiant further says that he was present when there was presented to the State Board of Equalization and Assessment, on or about the 25th day of July, A. D., 1922, and there and then prepared and filed amended reports required by said State Board in its forms "G" and No. 9, for the reason that the plaintiff Railroad Company had a fire in its headquarters in the City of Chicago, and a large part of its records were burned and destroyed, and in making the original report on said forms "G" and No. 9 the operating expenses and taxes in Nebraska are given as $27,420,906.19 when they actually were $31,289,319.97, being a difference of $3,868,413.68. The first report was made from the defective and incomplete records found after the fire, and the error was not discovered until all the data had been re-assembled and reconstructed, when it was found that from the original report there had not been deducted the Nebraska proportion of federal taxes, hire of equipment, and joint facility rents, and said amended reports, as aforesaid, were filed to correct said mistakes, and that the said difference in the two amounts aforesaid, should be deducted from the net earnings in Nebraska shown on the original reports; that the aforesaid amounts are the true and correct sums which should be used instead of the first erroneous amount given in the original reports. Further affiant saith not."

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibits "23" and "24," which are as follows:

201 C., B. & Q. Exhibit 23.

"R. D. Pollard, being first duly sworn deposes and says that he is tax agent for the Chicago, Burlington & Quincy Railroad Company for its lines west of the Missouri River, and has occupied that position for over thirty years last past. That in the month of May, 1922, affiant appeared before the State Board of Equalization and Assessment at the Governor's office in the Capitol Building in Lincoln, Nebraska, for the purpose of giving said board such information as affiant might have material to a consideration of the valuation that should be made by said board of the Railroad Company's property for assessment in Nebraska for 1922. Amongst other items of information, affiant furnished to said board a written itemized statement of property owned by said Railroad Company located outside the state of Nebraska, and not used in the operation of the Railroad Company's lines of railway, and also an item of shop buildings, tools and machinery, headquarters building, locally assessed, and property owned by the Railroad Company in Nebraska not used in the operation of its lines of railway and locally assessed by the local taxing officers. Affiant valued all of those said items according to his best judgment and information, and upon such information and belief affiant alleges that the valuations so given are correct. The following is a copy of items of property thus furnished and the value of items thus furnished:

202

	Estimated value.
Elevator Investments, Chicago and Burlington...	$326,844.59
Coal Investments, Illinois	$3,663,500.68
Sundry Investments	3,851,553.08
Union Depot Securities	175,349.12
Investments in Terminals	5,319,844.12
Miscellaneous Bonds	1,788,882.22
Stocks & Bonds of Roads held for control.....	27,922,783.87
Cash & Cash Assets—Balance	7,104,797.46
Local Property, Illinois	11,500,000.00
" " Iowa	645,000.00
" " Iowa (Woodbury County)	13,820.00
" " Wisconsin	48,000.00
North Platte to Bridgeport, Nebraska	229,327.00
Local Property, Minnesota	77,500.00
" " Missouri	7,867,500.00
" " Kansas	267,300.00
" " Nebraska	2,171,884.00
" " South Dakota	35,320.00
" " Wyoming	152,200.00
" " Colorado	516,150.00
Total	$73,677,476.14

Affiant further says that he requested the Board not to consider any of said items in arriving at the value of all of the Chicago, Burlington & Quincy Railroad Company's property in the state of Nebraska, subject to assessment by said board."

C., B. & Q. Exhibit 24.

"R. D. Pollard, being first duly sworn deposes and says that he is tax agent for the Chicago, Burlington & Quincy Railroad Company for its lines west of the Missouri River, and has occupied that position for over thirty years last past. That amongst other things it is affiant's duty annually to prepare and transmit to the State Board of Equalization and Assessment for the state of Nebraska, reports upon blanks furnished by said board so as to furnish the information desired by that board, to the end that they may value the property of said Railroad Company in the State of Nebraska for taxation.

203 Affiant further says that as required by said board, he reported to them the valuation of shop buildings, shop tools and machinery at the locations in said state where the Railroad Company maintains shops, and also the Omaha office furniture in the headquarters and city ticket office, Omaha headquarters, lands and buildings, in the following amounts:

Plattsmouth Shop Buildings	$161,502.00
Plattsmouth Shop Tools and Machinery	69,700.00
Havelock Shop Buildings	751,920.00
Havelock Shop Tools and Machinery	364,615.00
Ford Auto Truck	200.00
McCook Tools and Machinery	30,000.00
Office Furniture, Fixtures, Library, etc., general offices	8,000.00
Office Furniture, Stock Yards Office Building	150.00
General Office Building, Omaha, exclusive of land	92,000.00
Other Real Estate in Omaha not used in the operation of the railroad	41,300.00
Total	$1,519,387.00

Affiant further says that the local assessors of the counties where all and singular the foregoing property is located, valued said property for local assessment, and the state, county, and school district taxes were levied upon that valuation. Affiant further says that these facts were brought to the attention of the State Board of Equalization and Assessment by affiant testifying as a witness before them on the 25th day of July, 1922, and Honorable Hugh Lamaster, Assistant Attorney General representing the state authorities, cross examined affiant's testimony on that subject."

204 C., B. & Q. Exhibit 27.

The plaintiff then offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "27", being a notice

from the Secretary of the Nebraska State Railway Commission to the plaintiff dated March 16, 1912, which is as follows:

"Nebraska State Railway Commission.

H. J. Winnett, Chairman; A. B. Allen, Secretary; Henry T. Clarke, Jr., Thomas L. Hall.

Lincoln, March 16, 1912.

Mr. Byron Clark, G. S., C. B., & Q. R. R. Co., Omaha, Nebraska.

DEAR SIR: This is to notify you that the Nebraska State Railway Commission, acting under the provisions of chapter 107, Nebraska Session Laws of 1909 (commonly known as the physical Valuation Act), has completed its appraisal of the C. B. & Q. Co.'s property in the state of Nebraska, and finds the value of the same, as of July 1, 1909, to be as follows:

	Reproduction value new.	Present value.
Total value	$122,005,176.92	$104,037,188.98
Average per Mile of Rdwy...	42,808.83	36,504.28
Average per Mile of Track...	35,024.94	29,866.73

As provided by section 10 of the Act, the Commission will sit in its office at Lincoln, Nebraska, on Wednesday, April 17, 1912, at 10:00 o'clock a. m., at which time your company "may appear and show cause why such valuation as found by the Commission
205 should be raised or lowered or amended or changed in any particular.' Complete detailed reports of the Commission's engineering department, upon which the above totals and averages are based, are on file in the office of the Commission, and may be inspected by representatives of your company at any time. Very truly yours, A. B. Allen, Secretary."

Same letter to G. W. Holdrege, G. M. C. B. & Q., Omaha; F. T. Darrow, Chief Eng., Lincoln."

C., B. & Q. EXHIBIT 26.

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit 26, being the affidavit of Kathleen Egan, which is as follows: "Kathleen Egan on oath says that she is a Clerk and Stenographer for Byron Clark, Solicitor for the Chicago, Burlington & Quincy Railroad Company at Omaha, Nebraska. That on July 28th, 1922, she wrote for and said Byron Clark signed a letter as follows:

'Omaha, July 28th, 1922.

'Hon. W. H. Osborne, Tax Commissioner, Lincoln, Neb.

DEAR SIR: I suppose it is unnecessary but nevertheless I request that you do not, under section 8 of Article XI (Sec. 5905, Com-

piled Stat. 1922) of the Revenue Act, certify the State school general and special taxes to the respective county clerks until the complaining railroads, C. & N. W., U. P., and the Burlington have time to see your decision and determine the course they should pursue within the ten days permitted by Section 4. Yours truly, Byron Clark, Solicitor.'

That said letter was duly sealed with stamp upon the envelope and placed in the ordinary course of mail and by the ordinary schedules it should have been received at Lincoln on July 29th,
206 1922, by the addressee, Mr. Osborne. That in answer thereto was received the following letter:

State of Nebraska Tax Commissioner.

Lincoln, August 1, 1922.

'W. H. Osborne, Commissioner.

Mr. Byron Clark, Solicitor C. B. & Q. R. R. Co., Omaha, Nebraska.

DEAR Mr. CLARK: We have your letter of July 28th, in which you request us to not certify the State levy, and valuations until the complaining roads have time to see the decision of the State Board.

The State levy, will be made tomorrow, August 2, and we will let you know what the decision of the Board has been. But under Section 8 of Article XI of the Revenue Act (Sec. 5905, Comp. Stat. 1922) we are compelled to certify the levy and valuations out, not later than August 2. Very truly yours, Harry W. Scott, Deputy Tax Commissioner.'

which was received at the office of the said Byron Clark on August 2nd, 1922. Further affiant saith not."

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit 30, being the complaint filed by this plaintiff before the Nebraska State Board of Equalization and Assessment in 1922, filed July 3, 1922, which is as follows:

C., B. & Q. EXHIBIT 30.

"BEFORE THE NEBRASKA STATE BOARD OF EQUALIZATION AND ASSESSMENT.

In the Matter of the Equalization of the Property of the CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY in Nebraska for Taxing Purposes for 1922.

Complaint.

Comes now the Chicago, Burlington & Quincy Railroad Company and shows to this Honorable Board:

207 1. That is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and that it is and for many years last past has been authorized to transact business in the State of Nebraska; that complainant's business is that of a common carrier by rail for hire of passengers and freight and that its business is both intrastate and interstate in character.

2. That all of the property of your complainant in the State of Nebraska and in the several counties in said State through which your complainant's lines of railroad have been constructed, and are operated, subject to assessment by the State Board of Equalization and Assessment, has been assessed and valued by it for 1922 according to law for the purposes of taxation, and return has been made to the respective county clerks of the several counties in Nebraska as provided by statute.

3. That all and singular the county assessors and county boards of equalization of the State of Nebraska have prepared and filed pursuant to law with this board, abstracts of the assessment rolls of their respective counties, including therein the assessed valuation of complainant's property theretofore certified by this board to the several county clerks of the respective counties; that those abstracts are now on file with this Honorable Board to the end that all the properties in the State of Nebraska shall be equitably assessed as required by law.

208 4. Your complainant further shows that the several county assessors and county boards of equalization in all and singular the counties in the State have valued for assessment purposes in their respective counties for taxing purposes, for 1922, all property other than railroad properties at not to exceed fifty per cent of the actual value of said property.

5. Your complainant further alleges that the constitution and laws of the State of Nebraska provide that the property of your complainant be valued at its actual value for taxing purposes on the same basis used for the valuation and assessment of all other classes of property in the State of Nebraska, not exempted by law from taxation; that if the valuation of complainant's property be not reduced to the same percentage of actual value applied to other property valued and assessed by the several county assessors and county boards of equalization, or unless all other property in the State except the property exempted by law from taxation be valued and assessed by increasing such valuation and assessment, and all of the classes of property provided for by statute to be assessed at its actual value from said fifty per cent of the actual value to the percentage at which complainant's property has been assessed by this Honorable Board, your complainant will be denied equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Nebraska,
209 and complainant's property will be taken for public purposes without just compensation, and without due process of law, in derogation of sections 3 and 21, Article I, of the Bill of Rights of the Constitution of the State of Nebraska, and of the Fifth and

Fourteenth Amendments to the Constitution of the United States, which provide amongst other things that no person shall be deprived of life, liberty of property without due process of law, nor shall private property be taken for public use without just compensation, and that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

6. That this complaint is made with respect to the assessments of property by the local assessors and the county boards of equalization in all and singular the counties within the State of Nebraska.

7. Your complainant is ready and willing, and now offers to produce competent evidence to establish the truth of all and singular the allegations in this complaint contained.

Wherefore, your complainant prays:

1. That this Honorable Board fix a day and hour for a hearing of this complaint.

2. That it forthwith issue notices to all and singular the counties of the State, as provided by section 4 of Article XI, chapter
210 133, page 592, Laws of Nebraska, 1921, of the time and place where such hearing will be had to the end that all and singular the said counties will be represented at said hearing, and that this Honorable Board either reduce the valuation of your complainant's property for assessment and taxation purposes in this State and in each county thereof for 1922 to the same percentage of actual value as the percentage at which other property subject to taxation in the State of Nebraska has been valued by the several county assessors and county boards of equalization in the State of Nebraska, or that this Honorable Board shall raise and increase the valuation of all classes of property in each county within the State of Nebraska to the same percentage at which complainant's property has been assessed, to the end that the property of your complainants as assessed shall stand as near as may be upon the basis of equality with the property of other taxpayers and 'so that the resulting taxation shall be substantially uniform' as between the property of your complainant and the other property in this State, and to the end that the assessment against the property of your complainants shall be 'on the same basis' as other property. Chicago, Burlington and Quincy Railroad Company, By R. D. Pollard, Its Tax Agent.

211 C., B. & Q. Exhibit 29.

Bill of Exceptions of Hearing Before State Board of Equalization.

The plaintiff introduced and there was received and read in evidence, without objection, C. B. & Q. Exhibit "29," the same being bill of exceptions of the testimony adduced by various railroad companies, including the Chicago, Burlington & Quincy Railroad Com-

pany, before the State Board of Equalization and Assessment to support complaints made in the years 1921 and 1922 by said railroad company with respect to the valuation of their property in Nebraska for taxation as compared with the valuations of other properties in the state for the purpose of taxation, and particularly real estate.

The evidence submitted to the State Board of Equalization and Assessment in 1921 was also submitted and before the Board, with the additional evidence submitted, in 1922, by the railroad companies, including the Chicago, Burlington & Quincy Railroad Company.

The following was first introduced at the hearing in 1921:

Present at that hearing: Hon. George W. Marsh, Auditor of Accounts, Hon. D. B. Cropsey, Treasurer, and Hon. D. M. Amsberry, Secretary of State, presiding in the absence of the Governor, all officers of the State of Nebraska, Hon. William H. Osborne, Jr., Tax Commissioner of the State. Mr. Byron Clark, Solicitor for Chicago, Burlington & Quincy Railroad Company, Mr. C. A. Magaw, General Attorney for the Union Pacific System and the St. Joe & Grand Island Railway Company, and Mr. Wymer Dressler, Attor-
212 ney for the Northwestern Lines.

On Friday, July 22d, 1921, the following proceedings were had: Evidence was adduced by one railroad company to be considered on the part of the other railroad companies. The Chicago, Burlington & Quincy Railroad Company offered the resolution of the State Board of Equalization and Assessment in 1920, valuing the property of that railroad company for assessment as follows:

RESOLUTION OF STATE BOARD VALUING RAILROAD PROPERTIES FOR 1920.

"The following resolution was unanimously adopted: Resolved: That we, the State Board of Equalization and Assessment, in regular session held for the purpose of valuing and assessing the railroads in the State of Nebraska for the purpose of taxation of their property in the said state and having given due and full consideration to the returns furnished said Board by the several railroad companies, and having taken into consideration the main track, side track, spur track, warehouse tracks, road bed, right of way and depot grounds and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand and supplies, moneys, credits, franchises and all other property of said railroad companies and, having taken into consideration the gross and net earnings of said railroads, the total amount expended in operation and maintenance, the dividends paid, the capital stock of each system or road, and the market value thereof, and the total amount of secured and unsecured indebtedness, and from all the information which we are
able to obtain do hereby ascertain, appraise, fix and assess
213 for the purpose of general taxation the full actual value of the property of each of the several systems or companies in the State of Nebraska, as hereinafter recited.

Chicago, Burlington & Quincy Railroad Company, $131,765,605.00. * * *"

The following was admitted to be a plan and explanation of procedure of the State Board of Equalization and Assessment prepared by its Secretary and by Mr. Bross, Secretary of the Department of Finance of the State of Nebraska, and referring to the equalization of values for the year 1920, and was adopted by the Board and followed in the equalization of that year:

PLAN OF STATE BOARD.

"To the State Board of Equalization and Assessment:

In accordance with the request of your Board and in compliance with the motion passed at the meeting of the County Assessors and others representing the different counties of the State, a tentative plan of equalization between the counties of lands and improvements is herewith submitted for your consideration:

Before the assessment period began, a list of the transfers of lands in the different counties, from July 1, 1918 to July 1, 1919, was secured from the proper county officials. The list as sent in gave the number of transfers, the description of the land, number of acres, consideration, and 1919 assessed value of the same acres.

When these lists were received, they were carefully checked over and transfers which plainly showed they were not bonafide
214 sales were not used in compiling the average sale value for the county. These tabulations showing the average sale value for each precinct were furnished to each precinct and county assessor and they were instructed by the Department and by the Association of County Assessors to follow the law and fix the assessed value of all lands and improvements, as well as all other property, at the actual cash market value in the ordinary course of trade.

For the purpose of equalization between counties, it would hardly have been fair and just to take the average sale value as shown by the transfers. Good land might have been selling in one county while a cheaper grade of land was selling in another county. To correct this discrepancy, the assessed value for 1919 of the lands shown on the transfers was compared with the average assessed value of the county and this ratio was applied to the average sale value as shown in the transfers to establish the sale value per acre of the county which is shown in the second column of the prepared tabulation.

For instance, the average sale value of the transfers for Douglas County showed a sale value of $267.70 and these same acres were assessed for an average of $100.90. The average assessed value of the whole county was $96.90. To establish the sale value of Douglas County 96.90/100.90 of $267.70 is taken which gives $257.08 as the sale value. In other words, as the assessed valuation of the lands sold is to the consideration shown by the transfers, so
215 the assessed valuation of the entire county is to the selling value thereof.

The average value was established as above stated for practically each county, and this was used as the basis for the suggested equalization. In two counties, the list of transfers was never furnished and in one or two other instances, the lists furnished were not complete, or plainly showed that they were not reliable.

This method of establishing the average value per acre for a county has long been used by the Tax Commission of Wisconsin and has also been adopted by the Tax Commission of Minnesota.

The use of sales records and the adjusted average value for equalization purposes between counties makes a uniform and reliable plan which should fairly and justly equalize the real estate assessment between counties. The relative assessment of the different grades of land within a county cannot be considered by the State Board. The precinct assessors, county assessors and the County Boards determine the different grades of land within a county and assess them accordingly. The State Board only deals with the average of the county as compared with the average of the other counties of the State.

As has been stated, each county and precinct assessor was instructed to follow the law and, with all the information he could secure, including the record of the sale averages, assess all real estate and improvements at the actual market value.

216 The abstracts of assessment have been received covering lands and improvements for all the counties except Arthur. The returns show that the precinct assessors and other local assessing officials throughout the State have placed a value on lands and improvements which average over 68% of the average value as established by the ratio process based on actual sales. It would seem only fair and just that the State Board would accept this average valuation established by almost 2,000 precinct assessors and in equalizing the land and improvements between counties, maintain, as nearly as possible, for each county, an assessed actual valuation of 68% of the actual value as established by the ratio process.

The suggested equalization has been carried out with this end in view and the percentages shown in column five approximate 68%. In preparing the tabulation, adjoining counties have been grouped together for comparison purposes.

In counties where the assessment was returned at approximately 68%, no change has been made. In some counties the equalization to the 68% average would have made so great a percentage of change that it would have, without doubt, established within that county an unfair assessment of lands and improvements in comparison with other classes of property. As the sales are for only one year, in some cases it has seemed wise to take other information into consideration in equalizing some of the counties.

217 As directed by your Board yesterday, the counties where an increase is contemplated, have been notified and August 6th was set by your Board for hearing any protests. Besides advising counties where a raise is suggested, the tabulation showing the proposed changes by the State Board have been sent to the clerks, assessors and county board of all counties.

If the different grades of land within a county have been properly equalized by the county officials, obviously no injustice is done any county or taxpayer, if the lands and improvements are equalized as between counties on the basis of actual valuation as determined by the ratio process from actual sales. Courts recognize the price paid for similar property in the vicinity as the best evidence of value. A normal sale represents the judgment of both purchaser and seller as to the value of the property sold—one parts with his money and the other with his property on the basis of the consideration paid. When these sales cover a year's period and are averaged for each county and for the State; and when the assessed valuation of the lands sold is compared with the average assessed valuation of the county, no injustice will be done any county in establishing this basis for equalization purposes. Philip F. Bross, Secretary Department of Finance. W. H. Osborne, Jr., Secretary State Board of Equalization."

218 There also appears in that bill of exceptions a printed statement of the Board of Equalization and Assessment concerning the result of its 1920 equalizations of values of property for taxation and an admission that the same is genuine, as follows:

"Statement by the State Board of Equalization.

In the matter of equalization between counties, the State Board has adhered to the early announced plan of accepting for valuation purposes the average value placed on lands and improvements by the precinct and county assessing officials. For equalization between Counties, the value returned by the assessing officials of each county has been compared with the average real value, as established by the ratio process, based on bonafide sales from July 1, 1918, to July 1, 1919. The equalization of the counties on the basis of the sale average was requested of the Board at the meeting of the assessing officials of the counties held July 20th, 1920. The ratio process, used in correcting the sale averages, is the plan used by Wisconsin for a number of years, and Minnesota and other states have adopted the same plan.

Under this plan of equalization, the State Board has the combined judgment, as to value, of the assessing officials of the counties and of the buyers and sellers of real estate for a year's period. The year taken was previous to the land boom and does not cover the period of the highest prices.

The valuations as returned by the County Boards average 68% of the real value, as determined by the ratio process, and the State Board adopted this 68% as the basis for equalization purposes.

219 The Board has recognized throughout that land sales represent a more or less speculative value, and for this reason it would seem that the per cent taken of the real value is a just valuation for assessment purposes.

The returns from the counties were either increased or decreased, as was found necessary, to approximate the 68% of the real value.

In most cases, where the returns came in near the 68% average, no change was made. In some cases it was felt a decrease, large enough to bring the returns to the 68% average, might be unfair and interfere with the valuation necessary for the county levy. In other cases, it appeared that an increase, large enough to bring a county up to the 68% average, might be unjust and unreasonable.

That the Board has adhered very closely to the above plan is shown by the fact that the average real value, as determined by the ratio process, for the state was $94.33, and the average value for assessment purposes $64.98, or 68%.

Under this plan, the Board has accepted and adopted the average valuation of the local assessing officials. In making this equalization the State Board has decreased the total value of lands and improvements of the State $91,317,444.00, or $18,263,549.00 assessed value. The record shows that the State Board in 1916, increased the value of lands and improvements when they made the equalization, while this Board, as above stated, has decreased the total assessed value $18,200,000.00.

After the equalization by the State Board, some of the more important classes of property show the following increases for the four year period, 1916-1920:

	1916.	1920.	Per cent increase.	
Lands and Improvements	$266,460,319	$433,645,488	62	
Lots and Improvements	79,567,452	110,984,397	39	
Money on land	5,508,665	11,323,775	105	
Automobiles	4,192,375	15,391,906	263	
Merchandise	10,345,525	19,814,314	91	
Value of Interest in State Lands	511,686	738,884	44	
Improvements on Leased Lands	1,313,042	1,726,729	31	
Hogs	3,099,528	5,782,335	86	
Sheep	143,007	461,788	180	
Horses	12,985,586	11,729,435	9	Decrease.
Cattle	15,829,806	22,995,883	45	
Mules	1,958,433	2,131,812	8	
Total Live Stock	$34,016,370	$43,041,253	26	
Shares in Bank Stock	7,718,128	10,487,057	35	
Total Personal Property	$154,834,316	$231,319,875	40	
Grand Total	500,873,016	775,949,730	54	

During the six years previous to 1919 the increase of total assessed value of all property was 20%. During that same period of six years, the assessed valuation of railroads was not increased by the State Board as then composed, except a small amount—$1,026,125,

due to increased mileage. This year, the assessed valuation of the railroads was increased by $5,500,282.00 and the terminal assessments have been increased about the same percentage as the town property.

221 The following table will shown the assessed valuation of railroads for the last eight years, and that the only material increase is the raise given by the State Board this year:

1913.....	$55,829,328.00	1917.....	$56,855,453.00
1914.....	55,945,074.00	1918.....	56,855,453.00
1915.....	55,945,074.00	1919.....	56,867,503.00
1916.....	56,833,234.00	1920.....	61,367,785.00

In this connection, it is interesting to note the average per mile assessed valuation of railroads in the surrounding states. The following table shows plainly that the railroads are assessed at a greater value in Nebraska than in the other states:

	Northwestern.	Union Pacific.	Burlington.
Nebraska	37,975	74,711	46,040
Kansas	....	42,000	25,600
Colorado	....	40,732	47,218
Wyoming	27,022	52,000	33,179
South Dakota	30,500	....	40,580
North Dakota	24,650	....	....
Illinois	42,500	....	....
Iowa	38,500	....	....

(Wyoming figures are for 1919. Others for 1920.) (The double track and other improvements on the Northwestern in Illinois and Iowa accounts for the higher valuation in those states.)

The increase in valuation this year need not bring about any material increase of taxes. Except for possibly certain fixed levies, tax levies for every tax sub-division should be reduced so that

222 only the necessary revenue will be raised. The State Board has no control over local levies but if local authorities reduce the tax levies based on the increased valuation over 1919, there should be no great increase in taxes paid this year over 1919. It should be borne in mind that only 19 cents out of every dollar of tax goes to the support of the State government, while 81 cents is for local purposes."

There appears in this bill of exceptions from an admitted accurate copy of a resolution adopted by the State Assessors in Nebraska March 19, 1921, and in instructions, and given to all the County Assessors in Nebraska following this resolution, the following:

"State of Nebraska,

Department of Finance,

Bureau of Revenue and Taxation,

Lincoln.

To the County Assessor Addressed:

RESOLUTION ADOPTED AT STATE ASSESSORS' MEETING, MARCH 18, 1921.

At a meeting of the County Assessors held at Lincoln, Nebraska, on March 18th, 1921, the following resolution introduced by Harry W. Scott of Pawnee City, was adopted:

Whereas, There has been an expression representing the sentiment of sixty-four counties and the result of such expression seems to average fifteen per cent reduction under 1920 real estate values,

Therefore, Be it resolved that it be the sence of this meeting that the aggregate returns of the value of real estate in each county be returned to the State Board at not to exceed a fifteen per cent reduction.

223

It being understood that this shall in no way be binding upon any county, but merely suggests a uniformity of action.

Dated this 19th day of March, 1921. G. L. Mumford, Sec'y-Treas.

The above and foregoing is a verbatim copy of a resolution adopted by the County Assessors of the State at their meeting held in the City of Lincoln, on March 18th, 1921, and it is requested by this department that you read the resolution over carefully, so that the result of their labors will be in accordance with the thought of the conference. We very much desire to avoid the necessity of being compelled to again equalize to any great extent by counties this year, feeling as we do, that we have a very good equalization over the State at this time, but where the occasion demands the State Board will not shirk its duty to fairly and equitably raise or lower any county to the end that each bears its just relation, one to the other.

The unexpected passage of this emergency law makes it impossible for this department to follow up with any figures to assist you and you will have to rely on last year's figures, together with your knowledge of your local county and in addition to this, follow instructions from this department and the law governing your duties. Respectfully submitted, Philip F. Bross, Secretary Department of Finance. W. H. Osborne, Commissioner."

224

An admitted resolution adopted by the State Board of Equalization and Assessment valuing the railroad company in the State of Nebraska for the purpose of taxation for the year 1921, is found in said record as follows:

RESOLUTION OF STATE BOARD VALUING RAILROAD PROPERTIES FOR 1921.

"The following resolution was adopted:

Resolved: That we, the State Board of Equalization and Assessment, in regular session held for the purpose of valuing and assessing the railroads in the State of Nebraska for the purpose of taxation of their property in the said state and having given due and full consideration to the returns furnished said Board by the several railroad companies, and having taken into consideration the main track, side track, spur track, warehouse tracks, road bed, right of way and depot grounds and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand and supplies, monies, credits, franchises and all other property of said railroad comp-nies and, having taken into consideration the gross and net earnings of said railroads, the total amount expended in operation and maintenance, the dividends paid, the capital stock of each system or road, and the total
225 amount of secured and unsecured indebtedness, and from all the information which we are able to obtain do hereby ascertain, appraise, fix and assess for the purposes of general taxation the full actual value of the property of each of the several systems or companies in the State of Nebraska, as hereinafter recited.

Chicago, Burlington & Quincy Railroad Co., $131,765,605.00.

* * *"

The following from the instructions issued to County and Precinct Assessors by W. H. Osborne, Jr., Tax Commissioner for the State of Nebraska, in 1921, was admitted in evidence:

(Title Page.)

"UNIFORM INSTRUCTIONS TO COUNTY AND PRECINCT ASSESSORS FOR THE YEAR 1921.

As Approved by the Nebraska Tax Commission.

W. H. Osborne, Jr., Tax Commissioner.

Instructions to Assessors.

Nebraska Tax Commission.

Lincoln, Nebr., Feb. 17, 1921.

To county and precinct assessors:

The following revised instructions are to be observed in the assessment of property both real and personal in the State of Nebraska for the year 1921.

In past years it has been the custom of each County As-
226 sessor to issue his own individual instructions to his Pre-
cinct Assessors, and the result was, that the assessing authori-
ties of the 93 counties in the State were working under that many
different sets of instructions.

We ask that each Assessor study the instructions carefully, so that
when his work is completed he will have the satisfaction of knowing
that his work has been done according to law.

It is the belief of this department that by the use of these uniform
instructions, it will be the means of a more equitable distribution of
the tax burden, and a decided improvement over the discarded
method.

We can hardly expect to lessen the tax burden for some time to
come but the public has the right to demand that taxes shall be
equally distributed, and while I appreciate the difficulty of your task,
yet I am confident that considerable progress can be made if we will
all do our best.

If this department can be of any assistance to you at any time,
feel at liberty to command us. W. H. Osborne, Jr., Tax Commis-
sioner."

Before the State Board, in 1921, the railroad companies, including
the Chicago, Burlington & Quincy Railroad Company, produced and
there were sworn four witnesses, all of whom testified that with
respect to various counties in the State of Nebraska they examined
the records of those counties commencing July 1, 1919 and
227 continued on down to about July 11, 1921; ascertained the
consideration recited in all warranty deed transfers in that
county conveying land of forty acres or more, and ascertained the
assessed value of each of said tracts of land in 1920 and 1921; that
from this information they prepared computations; that they ap-
plied the rules adopted by the State Board of Equalization and As-
sessment in 1920 and 1921; that their work was correctly performed
and the result transferred to A. W. Scribner. The railroad com-
panies, including the Chicago, Burlington & Quincy Railroad Com-
pany, then stated to the Board they had other men present who had
examined the real estate records in various counties of the State, to
testify as the four preceding witnesses testified, and the following
colloquy occurred:

"Mr. Clark: Now, gentlemen, I have all of the men here that have
examined each of the counties so far as we are introducing them.
Do you want me to put each one of them on the stand here? We
have had each process used by each road now testified to.

Mr. Osborne: They have already submitted their testimony I
take it.

Mr. Clark: But I have a lot more here covering all of the counties.

The Chairman: I do not think you need do that. I think you
have sufficient testimony on that.

Mr. Clark: All of the cards of all of the counties will be
228 here subject to test and verification."

The result of the information secured by the witnesses last referred to is correctly tabulated and a recapitulation of the same is as follows:

(Here follows recapitulation, marked side folio page 229.)

230 Exhibit "O" in the bill of exceptions of the proceedings of the State Board of Equalization and Assessment for 1921 is a compilation of the information secured by the expert witness Scribner from the work of the field men hereinbefore testified to and from information furnished Scribner by the defendant Osborne, which said exhibit is as follows:

(Here follows Exhibit O, marked side folio page 231.)

232 There was received in evidence before the State Board of Equalization and Assessment, without objection, from a report issued by the Department of Agriculture of the State of Nebraska, March 1st, 1921, concerning agricultural statistics for that state, the following:

EXTRACT FROM NEBRASKA DEPT. OF AGRICULTURE REPORT FOR 1921.

"There has been a slight decrease in farm land values, which is rather exceptional. The average value of plow lands now and a year ago are as follows: Poor plow lands $85 and $85 per acre, good plow lands $150 and $150, all plow lands $125 and $125. The average price per acre of all improved farm lands is $125 against $135 a year ago. All unimproved farm lands average $95 per acre as compared to $110 a year ago. In connection with the above figures it must be remembered that 26% of the farm land is within the sandhill area of the state where values are very low when compared to the remainder of the state."

No evidence was adduced by the State Board of Equalization not by any person or persons other than the railroad companies.

233 On July 25, 1922, the Chicago, Burlington & Quincy Railroad Company, and other railroad companies, by their representatives, appeared before the State Board of Equalization and Assessment, in session in Lincoln, Nebraska. Present: Hon. D. M. Amsberry, Secretary of State, presiding in the absence of the Governor. Hon. George W. Marsh, Auditor of Accounts, Hon. D. B. Cropsey, Treasurer, Hon. W. H. Osborne, Jr., Tax Commissioner, and Hon. Hugh Lamaster, Assistant Attorney General. Mr. Byron Clark, Solicitor for the Chicago, Burlington & Quincy Railroad Company, Mr. C. A. Magaw, General Attorney for Union Pacific System, and Mr. Wymer Dressler, for the Northwestern Lines.

RECAPITULATION.

SHOWING THE TOTALS OF THE LISTS OF LANDS CONVEYED BY WARRANTY DEEDS BETWEEN JULY 1st, 1919, AND JULY 1st, 1921, IN 54 NEBRASKA COUNTIES, AND A COMPARISON OF THE SALES VALUE OF THE LANDS WITH THEIR ASSESSED VALUATION FOR THE YEARS 1920 and 1921.

COUNTIES	NUMBER OF DEEDS	NUMBER OF ACRES SOLD	TOTAL CONSIDERATION AS SHOWN BY THE DEEDS	ASSESSED VALUATION OF THE SAME LANDS 1920	ASSESSED VALUATION OF THE SAME LANDS 1921	AVERAGE SALE PRICE PER ACRE	AVERAGE ASSESSED VALUE PER ACRE OF SAME LANDS 1920	AVERAGE ASSESSED VALUE PER ACRE OF SAME LANDS 1921	PER CENT OF ASSESSED VALUE TO SALES VALUE 1920	PER CENT OF ASSESSED VALUE TO SALES VALUE 1921	PER CENT OF REDUCTION OF 1921 ASSESSMENT FROM 1920 ASSESSMENT.
Banner	73	26,788	$749,077.66	$395,365	$282,115	$27.96	$14.76	$10.53	52.78	37.66	28.64
Blaine	60	32,697	378,420.00	158,644	138,020	11.77	4.94	4.30	41.9	37.2	13.
Box Butte	303	68,716	2,837,641.	802,510	678,380	41.29	11.67	9.84	28.28	23.90	15.46
Buffalo	248	45,113	4,619,580.	2,458,650	2,145,225	102.40	54.5	47.55	53.2	46.4	12.8
Cass	119	12,736	2,823,622.35	1,549,140	1,246,695	221.72	121.63	97.89	54.9	44.15	19.52
Chase	70	21,639	789,250.	299,200	256,434	36.47	13.82	11.85	37.9	32.49	14.26
Cheyenne	333	83,020	5,419,657.	2,271,350	2,271,350	65.28	27.36	27.36	41.9	41.9	0
Dawson	273	58,775	4,749,400	2,673,300	2,228,295	80.80	45.48	37.90	56.1	46.9	16.8
Deuel	140	33,273	2,236,730	1,029,680	875,228	67.20		26.60	46.4	39.2	15.
Dundy	227	87,586	1,965,012	960,625	820,308	22.44	10.67	9.37	48.88	41.75	14.38
Fillmore	187	22,192	3,339,555	2,173,925	1,797,855	153.18	97.96	81.01	60.50	52.88	23.29
Franklin	217	35,476	2,599,395	1,884,025	1,272,305	73.27	53.11	35.86	72.48	48.95	32.47
Furnas	535	95,400	5,502,233	3,167,158	2,722,111	57.59	33.20	28.53	57.48	49.38	14.05
Gage	150	18,390	2,966,798	1,601,854	1,463,692	161.33	87.10	79.59	54.	49.	8.63
Garden	150	68,235	1,392,833	795,209	686,884	20.41		10.07	57.9	49.3	13.6
Garfield	91	29,960	730,810	416,645	253,337	24,39	13.90	11.79	57.	48.3	15.2
Gosper	199	42,001	2,476,976	1,264,209	1,138,296	58.97	30.10	27,10	51.03	45.95	11.18
Grant	57	33,423	291,762	150,005	129,975	11.72	4.48	3.89	38.29	33.18	13.35
Greeley	167	33,230	2,923,740	1,546,686	1,324,180	88.00		39.85	52.9	44.9	14.3
Wheeler	76	30,712	960,620	441,465	391,982	31.27	14.37	12.76	46.	40.8	11.2
Hall	115	15,313	2,025,172	1,017,960	880,485	132.25	66.47	57.5	50.	43.5	13.5
Hamilton	171	19,774	3,478,252	1,786,925	1,567,033	175.80	85.57	79.25	51.38	45.05	12.31
Harlan	226	39,889	2,917,675	1,516,150	1,324,585	73.15	38.01	33.21	51.96	45.40	12.63
Hitchcock	360	89,218	3,369,698	1,727,179	1, 659,193	37.10	19.36	18.60	52.18	50.13	3.94
Hooker	83	44,102	397,242	249,340	212,345	9.00	5.65	4.81	62.77	53.45	14.84
Webster	179	27,078	2,302,615	1,379,825	1,194,070	85.04	50.96	44.19	59.92	51.86	13.46
Howard	235	40,712	4,381,079	2,012,190	1,701,195	107.60		41.80	45.9	38.8	14.5
Jefferson	145	20,084	2,553,242	1,576,055	1,431,237	126.57	78.47	71.26	62.00	56.	9.19
Johnson	150	19.041	3,204,227	2,040,055	1,565,087	168.28	107.14	82.25	63.66	49.84	23.28
Kearney	199	26,754	3,009,873	1,633,425	1,354,135	112.50	61.05	50.61	54.3	44.98	17.09
Keith	168	60,243	2,812,352	1,297,139	1,001,927	46.68		16.63	46.2	35.6	22.8
Valley	213	43,142	4,048,710	2,007,310	1,640,715	93.85		38.00	49.6	40.5	18.
Kimball	308	100,170	4,415,782	2,202,250	2,202,250	44.08	16.02	16.02	49.9	49.9	0
Lincoln	446	171,453	5,173,416	1,633,650	1,369,069	30.18		7.99	31.6	26.5	16.2
Loup	78	31,653	473,095	231,099	198,857	14.94	7.30	6.25	49.	41.8	14.3
Merrick	162	26,000	3,538,683	1,754,720	1,437,409	136.10		55.29	49.6	40.6	18.1
Morrill	277	72,332	3,103,136	1,371,276	1,158,977	42.90		16.02	44.2	37.4	15.5
Thomas	92	55,953	547,306	306,344	240,350	9.18	5.48	4.29	56.06	43.92	21.67
Nance	171	34,213	4,398,327	2,550,110	1,922,217	143.20		56.48	52.6	39.2	24.6
Nemaha	170	15,889	3,238,558	1,808,185	1,439,546	203.92	103.80	90.62	55.83	44.45	20.39
Otoe	266	32,450	6,459,148	3,766,340	3,278,823	199.05	116.07	101.05	58.31	50.75	12.50
Pawnee	115	15,893	2,033,422	1,211,509	1,048,362	127.94	76.23	65.97	59.00	51.00	13.47
Phelps	275	50,097	4,455,466	2,724,379	2,355,044	88.94	54.39	47.01	61.16	52.86	13.57
Red Willow	554	115,342	5,639,030	3,183,305	2,892,508	48.89	27.60	25.08	56.45	51.28	9.14
Richardson	273	26,019	5,282,830	2,814,265	2,386,227	203.04	108.16	91.71	53.27	45.17	15.21
Thayer	263	38,347	4,739,146	2,617,250	2,347,617	123.59	68.25	61.22	55.23	49.54	10.3
Saline	224	25,375	4,072,153	2,585,480	2,270,659	160.48	101.89	89.49	63.49	55.76	12.18
Sarpy	49	5,021	1,135,307	568,150	478,375	226.11	113.15	95.27	50.04	42.14	15.80
Scotts Bluff	169	17,796	1,951,258	783,605	672,433	109.65	44.03	37.78	40.16	34.46	14.19
Sherman	210	43,050	3,535,870	1,653,225	1,437,242	82.36		33.38	46.8	40.6	13.1
Sioux	226	112,732	2,312,674	1,401,015	1,117,822	20.51	12.42	9.92	60.58	48.33	20.21
Total	10,166	2,314,504	$154,736,107	$82,617,513.	$67,908.461.	$66.85	$35.69	$29.34	53.38	43.88	17.79

(Here follows Exhibit O to Bill of Exceptions, marked side folio page 231.)

On this hearing the record of the evidence adduced as aforesaid in 1921 by the railroad companies was introduced in evidence. There was also introduced copies of the reports made under the statute of Nebraska to the State Board of Equalization and Assessment for the year ending December 31, 1921, for the Chicago, Burlington & Quincy Railroad Company being as follows:

234 STATEMENT.

Showing Mileage, Capital Stock, Earnings, and Operating Expenses of the Chicago, Burlington & Quincy R. R. Co., for the Year Ending December 31, 1921.

Mileage in Nebraska. Total Operated Mileage...		2,906.02
Capital Stock (System)		170,839,100.00
Gross Earnings in Nebraska.....		41,160,307.23
Passenger		7,818,276.07
Freight		30,044,617.32
Other Sources		3,297,413.84
Operating Expenses for Nebraska, including Taxes, Maintenance, Repairs, and Renewals.....	$25,213,372.34	
Operating Expenses, excluding Additions, Taxes, and betterments.	2,207,533.85	
		27,420,906.19
Net Earnings in Nebraska.....		13,739,401.04
Earnings per Mile, Gross		14,163.81
Earnings per Mile, Net		4,727.91
Interest on Debt (System)		6,807,134.36
Dividend Made (System) {Cash.....		44,925,917.00
Dividend Made (System) {Stock.....		60,000,000.00

I, H. W. Johnson, Comptroller of the Chicago, Burlington & Quincy R. R. Co., do solemnly swear that the above statement is true and correct to the best of my knowledge and belief. (Signed) H. W. Johnson, Comptroller.

Subscribed in my presence and sworn to before me this 7th day of April, A D. 1922. (Signed) Henry Lunde, Notary Public. (Seal.)

NOTE.—The above statement should be sworn to by the President, Secretary or Treasure- of the Company and should be made to the Auditor of State during the month of January (See Section 88, Chapter 16, compiled Statutes of Nebraska, 1887.)

235 STATEMENT.

Showing the Total Gross and Net Earnings of the Chicago, Burlington & Quincy R. R. Co. for the Year Ending December 31, 1921.

Total gross earnings during the year for which made In Nebraska	$41,160,307.23
Total net earnings during the year for which made In Nebraska	$13,739,401.04
Total amount expended in operation or maintenance of the property and the improvements thereof	(See Note.)
Amount of same expended in Improvements or Betterments	(See Note.)
Amount expended in maintenance or operation (Including Taxes) in Nebraska	$27,420,906.19
Dividend last declared on shares of Stock, System, Per cent, 20%, Amount	$34,167,380.00
Date, Number and amount of all dividends declared on this stock during the year next preceding the date of this report	Date: March 25, 1921; March 31st, 1921; June 25, 1921; Dec. 27, 1921 Number 4 Amt. $44,925,917.00, Cash 60,000,000.00, Stock

NOTE.—Impossible to answer these two questions at this time as all records of Cost of Additions and Betterments for the year 1921 were destroyed in the General Office Building Fire of March 15th, 1922.

I, H. W. Johnson, Comptroller of the Chicago, Burlington & Quincy R. R. Co., do solemnly swear that the above statement is true to the best of my knowledge and belief. (Signed) H. W. Johnson, Comptroller.

Subscribed in my presence and sworn to before me this 7th day of April 1922. (Signed) Henry Lunde, Notary Public. (Seal.)

236 TESTIMONY OF E. F. MORGAN.

E. F. MORGAN, Assistant Auditor of the Chicago, Burlington & Quincy Railroad Company was sworn and testified as follows: Am acquainted with the books, records and data of Chicago, Burlington & Quincy Railroad Company from which the foregoing statements were made under my supervision. About one week ago I discovered errors relating to operating expenses in the original statements. This error was caused by a disastrous fire in the general office building the night of March 14 when many of our records were destroyed. About a week or ten days ago I re-examined this report and found a discrepancy of approximately three million dol-

lars, which, investigation developed, grew out of omitting all of the traffic and trainmen expenses; it was just a human error and they had nothing to balance to at that time. I made an amended statement which includes also two other changes. The original statement did not include any proportion of Federal taxes properly assignable to Nebraska nor the amounts paid for joint facilities in the State of Nebraska, nor for our proportion of the net amount paid for rented equipment. As amended the figures shown for net earnings for Nebraska are comparable with that net railway operating income defined in the Act. The amended statement to the State Board of Equalization and Assessment, as testified to by the witness is as follows:

237 Form G.

AMENDED STATEMENT.

Showing Mileage, Capital Stock, Earnings, and Operating Expenses of the Chicago, Burlington & Quincy R. R. Co. for the Year Ending December 31, 1921.

Mileage in Nebraska	2,906.02
Capital Stock	$170,839,100.00
Gross Earnings in Nebraska	41,160,307.23
Passenger	7,818,276.07
Freight	30,044,617.32
Other Sources	3,297,413.04
Operating Expenses for Nebraska including Taxes, Maintenances, Repairs and Renewals, excluding Additions and Betterments	31,289,319.87*
Net earnings in Nebraska	9,870,987.36
Earnings per mile, Gross	14,163.81
Earnings per Mile, Net	3,396.74
Interest on Debt	6,807,134.56
Dividends Made (Cash,	44,925,917.00
Dividends Made (Stock,	60,000,000.00

I, E. F. Morgan, Assistant Auditor of the Chicago, Burlington & Quincy R. R. Co., do solemnly swear that the above statement is true and correct to the best of my knowledge and belief. (Signed) E. F. Morgan, Assistant Auditor.

Subscribed in my presence and sworn to before me this 25 day of July A. D., 1922. (Signed) Hazel Nigh, Notary Public. (Seal.)

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*Operating Expenses	$28,209,414.18
Nebraska Taxes	2,207,533.85
U. S. Taxes	654,978.11
Hire of Equipment	125,220.90
Jt. Facility Rents	92,163.83
	$31,289,319.87

238 AMENDED STATEMENT

Showing the Total Gross and Net Earnings of the Chicago, Burlington & Quincy R. R. Co., for the Year Ending March 31, 19—.

Total gross earnings during the year for which made In Nebraska	$41,160,307.22
Total net earnings during the year for which made In Nebraska	9,870,987.36
Total amount expended in operation or maintenance of the property and the improvements thereof	(See note.)
Amount of same expended in improvements or betterments	(See Notes.)
Amount expended in maintenance or operation; including taxes (In Nebraska)	$31,289,319.87
Dividends last declared on shares of stock, system, per cent 20%, Amount	$34,167,380.00

Date, number and amount of all dividends declared on this stock during the year next preceding the date of this report.

Date { March 25, 1921. / March 31, 1921. / June 25, 1921. / Dec. 27, 1921.

Number, 4.

Amt. { $44,925,917.00, Cost. / $60,000,000.00, Stock.

NOTE.—Impossible to answer these questions at this time as all records of cost of additions and betterments for the year 1921 were destroyed in the General Office Building Fire of March 15, 1922.

I, E. F. Morgan, Assistant Auditor of the Chicago, Burlington & Quincy Railroad Company, do solemnly swear that the above statement is true to the best of my knowledge and behalf. (Signed) E. F. Morgan, Assistant Auditor.

Subscribed in my presence and sworn to before me this 25th day of July, 1922. (Signed) Hazel Nigh, Notary Public. (Seal.)

239 This witness also identified Exhibit 9 in said bill of exceptions, being the sworn statement of the witness concerning net earnings of the Chicago, Burlington & Quincy Railroad Company for a five-year period ending December 31, 1921 in the State of Nebraska, both inclusive, and exclusive of federal taxes assignable to Nebraska during those years, and the hire of equipment and joint facility rents properly chargeable to Nebraska during that time, as follows:

240 STATEMENT SHOWING NET EARNINGS.

Omaha, Nebraska, July 25th, 1922.

Statements, Form G, sworn to by the Comptroller of this Company have been filed annually with the Auditor of State, State of Nebraska which have shown the "Net Earnings in Nebraska" of the Chicago, Burlington & Quincy Railroad Company for the five year period ended December 31, 1921, as follows:

1917	$9,530,535.46
1918	8,320,696.70
1919	8,578,058.76
1920	3,390,921.92
1921	10,088,381.09

The figures shown above for the years 1917 to 1920 inclusive are the Operating Revenues for each year less the Operating Expenses and State Taxes, with nothing deducted for the proportion of United States Government taxes properly assignable to the State of Nebraska, nor for the Hire of Equipment of Joint Facility Rents. The proportion of United States Government taxes has been deducted in arriving at the figures shown above for the year 1921.

After deducting the Nebraska proportion of United States Government taxes assignable to Nebraska for each of the year- 1917 to 1920 inclusive, and the Hire of Equipment and Joint Facility Rents for all years, the "Net Earnings in Nebraska" for the 5 year period ended December 31, 1921 would be:

1917	$8,559,773.09
1918	7,185,038.62
1919	7,336,922.86
1920	1,960,994.17
1921	9,870,987.36
Average	$6,982,743.00

I, E. F. Morgan, Assistant Auditor of the Chicago, Burlington & Quincy R. R. Company, do solemnly swear that the above statement is true and correct to the best of my knowledge and belief. E. F. Morgan, Assistant Auditor.

STATE OF NEBRASKA,
County of Lancaster:

Subscribed in my presence and sworn to before me this 25th day of July, 1922. Hazel Nigh, Notary Public. (Seal.)

241 The witness continues: One reason why I select the five-year period is that the Bureau of Internal Revenue of the federal government, in an exhibit required in the capital stock tax return, used as a factor in determining the value of the capital stock

of any corporation, require each corporation to show, in a tabulation, the net income for the five years previously and an average of those years.

TESTIMONY OF R. D. POLLARD.

R. D. Pollard was called in the hearing before the State Board of Equalization and Assessment and being sworn testified on behalf of Chicago, Burlington & Quincy Railroad Company; that he is Tax Agent for that company in charge of Nebraska; that he prepared a statement of property owned by the railroad company in Nebraska locally assessed and not within the jurisdiction of the State Board of Equalization and Assessment for assessment purposes, the same being as follows:

"Plattsmouth Shop Buildings	$161,502
Plattsmouth Shop Tools and Machinery	69,700
Havelock Shop Buildings	751,920
Havelock Shop Tools and Machinery	364,515
McCook Tools and Machinery	30,000
Burnham Sheep Yard Buildings	32,754
Feed Horses, Mules, etc., at Burnham	6,465
Furniture in Omaha Headquarters and City Ticket office	10,705
Land and Building Omaha Headquarters	137,000
Total	$1,564,861

On cross examination by Mr. Lamaster for the Board, the witness said: These figures were prepared because under the statutes certain property used in the operation of the road is assessed by the local assessor, for instance, shops and the headquarters at Omaha.

242 TESTIMONY OF A. W. SCRIBNER.

A. W. Scribner, Tax Agent for the Union Pacific System, being duly sworn, testified that the defendant Osborne, State Tax Commissioner, sent the witness a document headed "Formula used by State Board of Equalization in Determining Railroad Values in 1922 in Nebraska". So much of the same as applies to the Chicago, Burlington & Quincy Railroad Company is as follows:

"FORMULA USED BY STATE BOARD OF EQUALIZATION IN DETERMINING RAILROAD VALUES FOR 1922 IN NEBRASKA.

C. B. & Q.

Net Earnings in Nebraska	$13,739,401.04
Assessment for 1921 as fixed by State Board	131,755,725.
6% of which is	7,905,343.50
This deducted from net earnings leaves	5,834,057.54
Added to $131, 755,725 gives	137,589,782.00

Or total assessment for 1922."

The defendant Osborne then stated: "I will say that I have no objection as a member of this Board for the formula going into the record, but the resolution itself adopted by the Board is the best evidence in determining the method employed by the Board in fixing the value of the railroads".

The solicitor for the Chicago, Burlington & Quincy Railroad Company then offered and there was received and read in evidence Exhibit 11, which, so far as it concerns that railroad company, is as follows:

243 EXHIBIT 11 TO SCRIBNER'S TESTIMONY.

Office of the Governor.
Lincoln, Nebraska, June 15th, 1922.

The State Board of Equalization reconvened at the office of the Governor at 10:30 a. m., all members present, the governor in the chair.

The question of railroad values for the year 1922 was then discussed by the Board and the following resolution was unanimously adopted:

Resolved: That we, the State Board of Equalization and Assessment, in regular session held for the purpose of valuing and assessing the railroads in the State of Nebraska, for the purpose of taxation of their property in the said State, and having given due and full consideration to the returns furnished said Board by the several railroad companies, and having taken into consideration the main track, side track, spur track, ware-house tracks, road bed, right of way and depot grounds, and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hands, and supplies, monies, credits, franchises, and all other property of said railroad companies, and having taken into consideration the gross and net earnings of the said railroads, the total amount expended in operation and maintenance, the dividends paid, the capital stock of each system or road, and the market value thereof, and the total amount secured and unsecured indebtedness, and from all the information which we are able to obtain do hereby ascertain, appraise, fix and assess for the purpose of general taxation, the full actual value of the property of each of the several systems or companies in the State of Nebraska, as hereinafter recited:

Railroad.	Miles of track.	Total actual valuation.
Chicago Burlington & Quincy	2861.60	$137,589,782.00

244 The witness Scribner recalled before the State board and testifies that he secured data showing lands mortgaged in certain counties of the State of Nebraska and the valuation placed upon the separate tracts of land by the Loan Companies and by the owners; that he first secured lists of mortgages upon lands made by Loan & Trust Companies between March, 1920 and March, 1922; then secured from the Loan Companies making the mortgages a

record of the owners statement as to the value of the mortgaged lands in each instance, and also the appraised value on the same tracts fixed by the Loan Companies, then secured from the county records the assessed valuation for 1921 and 1922 of all of those mortgaged tracts of land; the information thus secured was tabulated into a statement which was introduced in evidence before the State Board of Equalization and Assessment and also introduced on the application for an interlocutory injunction and is hereinbefore identified as C. B. & Q. Exhibit "1". The mortgages were made between March, 1920 and March, 1922. An offer was made to the State Board of Equalization and Assessment and its counsel to submit all of the original data upon which Mr. Scribner's statement was based. The witness was then asked by Mr. Osborne as follows: "Q. The figures that you have here enumerated, Mr. Scribner, are the figures from the loan companies and not from your own personal inspection? A. From the loan companies, yes sir. Q. (By Chairman Amsberry). 245 Did these companies state on what per cent they were loaning? A. They varied somewhat as to that. I think the maximum was 50 per cent, but generally around 40." The witness then continuing in answer to Mr. Clark's questioning: The Loan Companies require mortgagors to file written applications stating the value of the land offered as security. The Loan Companies do not, in the first instance, accept this value but make an independent appraisal. The aggregate total number of acres mortgaged is 369,541, which is perhaps a rather small fraction of the entire acreage in the state but is scattered generally over the state; we included all of the mortgages to Loan Companies so far as we were able to get information with respect to same; as to some of them we could not get the information because it was claimed that the records of the owners' valuation and the appraisement were out of the state, and two companies, the Bankers Life and the Federal Land Bank, refused to give us information.

Exhibit 14 (in bill of exceptions *if* the State Board) is a list of land sales of lands conveyed by warranty deeds in 53 Nebraska counties between March 1, 1921 and October 1, 1922. No deeds were tabulated unless the minimum acreage was forty acres. This exhibit was received in evidence before the State Board and the information thereon is reflected in C. B. & Q. Exhibit "2" produced on the hearing on the application for the interlocutory injunction. Cross examination by Mr. Lamaster for the State Board: Exhibit 13 represents answers from 40 or 41 Loan Companies, the largest doing 246 business in the state; my instructions to parties gathering the information of sales of real estate between March 1, 1921 and October 1, 1922 was to use only what appeared to be, as far as they could see by the record, bona fide sales between those dates. The record does not show whether any of these conveyances were made in pursuance of contracts dated a considerable period before the sale. The great volume of dealing in real estate in Nebraska was during 1918 and 1919. Our people were instructed to look after those sales made during the boom period and consummated by deeds between March 1, 1921 and October 1, 1922 and I assume that they did that.

Parties were instructed to omit all transactions that appeared to be a closing-up of a sale or a re-transfer to the party sold showing that the land was taken back; they would occasionally find a clean-up transaction on the record and these were excluded and they do not appear upon the work sheets.

Mr. Lamaster then introduced in evidence an affidavit of Harry W. Scott, Deputy Tax Commissioner for Nebraska, which is as follows:

247 AFFIDAVIT OF HARRY W. SCOTT.

STATE OF NEBRASKA,
County of Lancaster, ss:

Harry W. Scott, being first duly sworn, on oath says he is deputy tax commissioner of the state of Nebraska and has held such office for more than one year last past; that in connection with the suit of Chicago & North Western Railway Company v. W. H. Osborne, Jr., et al. and the suit of Chicago, St. Paul, Minneapolis & Omaha Railway Company, v. W. H. Osborne, Jr., et al., now pending in the District Court of the United States for the District of Nebraska, this affiant assisted in making a careful study of rural real estate values in a number of counties in Nebraska traversed by the lines of the said plaintiff railway companies; that in Cuming county, Nebraska, affiant assisted in making a particularly careful study of rural real estate values and rural real estate transfers, especially transfers listed in the showings filed by the said companies in said suits; and that in pursuance of said studies affidavits were received from a large number of residents of Cuming county.

A summary of each of the affidavits which show two or more conveyances, or show definite listings for sale, or definite offers indicating value, or giving definite expressions of the owners of such real estate, or of definite expressions of value of those who are qualified to testify as to real estate values in said county, is given below. Conveyances not made in the usual course of business, or made be-
248 tween relatives, or those of small or fractional tracts, are not included herein. Legal descriptions are omitted. Record book and page are stated. All of the affidavits refer to Cuming county land.

Fred Thietje, real estate dealer, states that from June 1 to December 1, 1921, real estate in Cuming county fell at least twenty-five per cent; that in 1919, John Clatanoff was offered $325 per acre for eighty acres and that $125 per acre is the best offer now obtainable. Affidavit dated December 1, 1921.

F. C. Evans, real estate dealer, in that business twenty-seven years, states that since 1919 real estate in Cuming county has depreciated at least fifty per cent; that during the past year he appraised several tracts of land for inheritance tax assessment; that such appraisals ran from $100 to $175 per acre, which he considers a fair value for Cuming county real estate on April 1, 1921. Affidavit dated December 2, 1921.

Paul Kase states that on September 24, 1919, he sold 78 acres for $23,400; that the same was reconveyed (Book 25, page 561) January 21, 1920, as purchaser would not complete transaction; that he is now anxious to sell said real estate for $11,700. Affidavit dated December 2, 1921.

Henry Behrens, banker at Beemer, states that in August, 1919, on behalf of one of his customers he offered to Rudolph Brazda $275 per acre for 390¾ acres, which offer was declined; that the land was sold at public auction in partition action on November 26, 1921, for $147 per acre. Affidavit dated December 1, 1921.

Wm. A. Smith, banker at Beemer, states that on the 14th day of February, 1920, he sold 80 acres for $23,000, sale being made in pursuance of a contract made on December 19, 1919; that on May 14, 1921, his grantee contracted to sell said land for $15,000, or $8,000 less than he (W. A. Smith) received; that said transaction is representative of the general decline in real estate values during the past year. (Book 26 of Deeds, page 308.) Affidavit dated December 1, 1921. .

Henry Gentrup states that one-half section was sold in 1919 for $112,000, only a portion of which was conveyed to the purchaser and that was afterwards reconveyed to the grantor; that on March 21, 1921, he (Henry Gentrup) bought the same land for $80,000; that the land has continued to decrease in price and that if he were now purchasing he would not pay as much for it as when he bought it. (Book 26, pages 697, 698.) Affidavit dated December 3, 1921.

249 John Cerny states that on March 1, 1920, in pursuance of a written contract dated June 18, 1919, he sold 160 acres for $40,820; that on April 1, 1921, the fair market value did not exceed $31,400. (Book 25, page 329.) Affidavit dated December 14, 1921.

Adolph Behrens states that on January 3, 1920, he purchased 80 acres of land in pursuance of a written contract made in June, 1919, for $14,800; that the fair market value thereof on April 1, 1921, was not to exceed seventy per cent of said amount. (Book 25, page 664.) Affidavit dated December 14, 1921.

Rudolph Rhode states that on February 26, 1921, he purchased 80 acres for $18,000; that on April 1, 1921, the fair market value thereof was not to exceed $12,000; that owing to the fact that the land lay directly across the road from his home caused him to pay more than the ordinary purchaser would have paid therefor. (Book 28, page 113.) Affidavit dated December 14, 1921.

Wm. Throener states that in pursuance of a written contract made in July, 1919, he purchased on February 21, 1920, a quarter section of land for $59,280; that the fair market value of said land on April 1, 1921, was not to exceed $35,000. (Book 25, page 592.) Affidavit dated December 14, 1921. .

Richard H. Holsten states that in pursuance of a written contract dated July 2, 1919, he purchased 80 acres on March 1, 1920, for $23,450; that the purchase included other lands and that the purchase price was averaged making the amount above mentioned somewhat too high for the land described in the deed; that the fair market value of the 80 acres mentioned on April 1, 1921, would not exceed

sixty-five per cent of said sum. (Book 25, page 617.) Affidavit dated December 14, 1921.

Richard H. Holsten states that in pursuance of a written contract dated July 2, 1919, he purchased on February 28, 1920, 80 acres for $22,800; that the fair market value of said tract on April 1, 1921, would not exceed sixty-five per cent of the sum named. (Book 25, page 626.) Affidavit dated December 14, 1921.

Charles Hrabek states that in pursuance of a written contract dated July 12, 1919, he purchased on February 28, 1920, 80 acres for $21,060; that on April 1, 1921, the fair market value thereof would not exceed sixty-five per cent of said purchase price. (Book 25, page 628.) Affidavit dated December 14, 1921.

Charles Hrabek states that in pursuance of a written contract dated August 11, 1919, he sold on March 1, 1920, 80 acres of land for $24,048; that on April 1, 1921, the fair market value thereof would not exceed sixty-five per cent of said purchase price. (Book 25, page 629.) Affidavit dated December 14, 1921.

250 Walter Reeson states that on January 1, 1920, he sold 160 acres for $55,407 in pursuance of a written contract dated June 28, 1919; that owing to the fact that the grantee owned adjoining land it induced him to pay considerably more than any other purchaser would have paid; that if said land had been offered for sale during the past year it would not have brought over three-fifths of said purchase price. (Book 26, page 192.) Affidavit dated December 1, 1921. .

Walter Reeson states that in pursuance of a written contract made June 28, 1919, he sold 160 acres of land for $65,593; that owing to the fact that grantee owned land adjoining he was induced to pay considerably more than any other purchaser would have paid; that if said land had been offered for sale during the past year it would have been impossible to receive over three-fifths of the amount of said purchase price. (Book 26, page 193.) Affidavit dated December 1, 1921.

Fred Thietje, real estate dealer, states that he is familiar with the quarter section of land sold by Charles Kappius to Joseph Guenther on March 1, 1920, for a consideration of $63,200; that said Guenther paid $20,000 in cash and gave a mortgage for the balance; that if said land had been offered for sale at any time during the past six months it would not have sold for the amount of the mortgage. (Book 26, page 277.) Affidavit dated December 1, 1921.

Frank L. Boyer states that in pursuance of a written contract dated June 13, 1919, he conveyed to Henry Rolf on February 24, 1920, a quarter section of land for $41,500; that owing to the fact that Rolf had relatives living near said land he was induced to pay more than the ordinary purchaser would have paid; that had he owned said land in March, 1921, or at any time since he could not have received to exceed $28,000 therefor. (Book 26, page 291.) Affidavit dated December 3, 1921.

Fred W. Jarrett states that in pursuance of a written contract dated July 22, 1919, he conveyed on March 1, 1920, a quarter section of land for $26,400; that the purchaser was not able to settle on terms

specified and that said land has so depreciated in value that if he has to take back the land he would not give to exceed therefor more than the sum of $14,284, being the incumbrances on said land. (Book 26, page 334.) Affidavit dated December 1, 1921.

Frank H. Harstick states that in April, 1919, he contracted to purchase 160 acres of land for $20,250; that about three months later he sold the same for $22,500, the conveyances being made in 1920; that if he had not sold the land at the time he did it would have been impossible for him to receive as much as he paid for it at any time during the year 1921. (Book 26, page 424.) (Book 26, page 345.) Affidavit dated December 3, 1921.

251 Fred Thietje states that in pursuance of a written contract dated October 7, 1919, he conveyed on March 1, 1920, 80 acres of land for $32,000; that if said land were to be sold now, or had been sold during the past six months, it would not have brought to exceed $12,000. (Book 26, page 487.) Affidavit dated December 1, 1921.

Albert Bracht states that in pursuance of a written contract made in July, 1919, he purchased on February 20, 1920, 80 acres of land for $20,000; that the fair market value of said land on April 1, 1921, was $14,000. (Book 26, page 263.) Affidavit dated December 14, 1921.

Bernard Hunke states that in pursuance of a written contract made in August, 1919, he purchased 80 acres of land on February 26, 1920; that the fair market value thereof on April 1, 1921, did not exceed $14,000. (Book 26, 375.) Affidavit dated December 14, 1921.

Emil Wegner states that in pursuance of a written contract made in September 1919, he purchased on March 3, 1920, a certain tract of land (acreage not clearly stated) for $44,880; that on April 1, 1921, the fair market value thereof would not exceed $27,200. (Book 26, page 411.) Affidavit dated December 16, 1921.

John K. Erb states that in pursuance of a written contract made in August, 1919, he purchased February 21, 1920, a quarter section of land for $20,800; that if he were to have purchased said land in April, 1921, he would not have paid to exceed $12,000 for it. (Book 26, page 286.) Affidavit dated December 16, 1921.

Hugo M. Nicholson states that in pursuance of a written contract dated August 7, 1919, he sold 80 acres of land for $16,800; that said land did not exceed in value on April 1, 1921, the sum of $10,000. He further says that in his opinion land in Cuming county had on April 1, 1921, decreased in value to the extent of forty to fifty per centum of its value in 1919 and in the spring of 1920. (Book 26, page 398.) Affidavit dated December 13, 1921.

Herman Lemke states that in pursuance of a written contract dated August 7, 1919, he purchased on March 30, 1920, a quarter section of land for $24,000; that the same could not have been sold on April 1, 1921, to exceed $16,000. (Book 26, page 399.) Affidavit dated December 16, 1921.

Herman Lemke states that in pursuance of a written contract made February 7, 1920, on the 30th day of March, 1920, he sold a quarter section of land for $24,800; that the fair market value of said land

on April 1, 1921, did not exceed $16,000. (Book 26, page 400.) Affidavit dated December 16, 1921.

252 Henry W. Peters states that in pursuance of a written contract dated August 8, 1919, he sold on March 22, 1920, 80 acres of land for $16,400, taking back a mortgage for $10,000; that only a part of the interest has been paid thereon during the past year and that if said mortgage be foreclosed the land will not bring any more than the amount of the mortgage. (Book 26, page 408.) Affidavit dated December 16, 1921.

Clarence Galbraith states that in pursuance of a written contract dated March 15, 1919, he purchased on February 26, 1920, 80 acres for $26,000; that he considered $16,000 as a fair market value of said land at the present time. (Book 26, page 254.) Affidavit dated December 2, 1921.

J. H. Emley states that in pursuance of a written contract dated September 30, 1919, he sold on February 28, 1920, 240 acres of land for $78,000; that there are now mortgages on said land for $40,000 and that he would not give to exceed the amount of the mortgages for the land; that the land was not worth any more on April 1, 1921, than at the present time. (Book 26, pages 288-289.) Affidavit dated December 2, 1921.

Clarence Galbraith states that in pursuance of a written contract dated November 14, 1919, he purchased from W. A. Smith on February 14, 1920, a quarter section of land for $48,000; that he considers $28,800 to be the fair market value of said land at the present time. (Book 26, page 307.) Affidavit dated December 2, 1921.

Wm. A. Smith states that on March 1, 1920, Andrew R. Olson conveyed 80 acres of land for $26,000. (Deed in Book 26, page 323); that he is authorized by the grantee, the present owner, to sell the same for $16,000, or for $10,000 less than the price paid. (Book 26, page 333.) Affidavit dated December 2, 1921.

A. R. Oleson states that in pursuance of a written contract dated August, 1919, he sold on March 1, 1920, 80 acres of land for $26,000; that on April 1, 1921, he believed it could have been sold for $225 per acre but that at this time it was doubtful whether it could be sold for over $200 per acre. (Book 26, page 323.) Affidavit dated December 13, 1921.

Ben Martin states that in pursuance of a written contract made in August, 1919, he sold a quarter section of land for $60,000; that on April 1, 1921, the same could not have been sold for more than $40,000. (Book 26, page 366.) Affidavit dated December 13, 1921.

O. H. Wegner states that in pursuance to a written contract made May 29, 1919, he sold on February 26, 1920, 80 acres of land for $18,800; that the fair market value thereof on April 1, 1921, did not exceed $14,000. (Book 26, page 305.) Affidavit dated December 16, 1921.

253 John F. Jurgenson states that in pursuance of a written contract made in August, 1919, he purchased on February 28, 1920, a quarter section for $42,400; that the fair market value

thereof on April 1, 1921, did not exceed $32,000. (Book 26, page 311.) Affidavit dated December 16, 1921.

John B. Wingert states that in pursuance of a written contract made in July, 1919, he sold in February, 1920, 80 acres of land for $25,408.50; that the fair market value thereof on April 1, 1921, would not exceed $200 per acre. (Book 25, page 603.) Affidavit dated December 15, 1921.

Geo. W. Breitharth states that in pursuance of a written contract dated July 7, 1919, he purchased a quarter section for $42,300; that he was unable to meet his payments thereon and turned the same over to his father; that although he had placed numerous improvements on said land he considers that its fair market value on April 1, 1919, to be approximately $18,000. (Book 25, page 615.) Affidavit dated December 15, 1921.

Joseph Leimer states that in pursuance of a written contract made in July, 1919, he purchased on March 1, 1920, a quarter section for $53,600; that the fair market value thereof on April 1, 1921, would not exceed $33,000. (Book 26, page 297.) Affidavit dated December 15, 1921.

Ernest F. Beckmann states that in pursuance of a written contract made in June, 1919, he purchased on February 17, 1920, 80 acres of land for $24,000; that owing to its situation he paid more therefor than the ordinary purchaser would have paid; that the land has depreciated in value not less than thirty-five per cent since the date of the agreement. (Book 28, page 7.) Affidavit dated December 15, 1921.

O. L. Nelson states that in pursuance of a written contract dated June 21, 1919, he sold on February 19, 1920, 80 acres of land for $36,349; that on or about September 1, 1921, he re-purchased said land from his grantee for the sum of $24,000. (Book 26, page 376.) Affidavit dated December 5, 1921.

Jerome K. Brazda states that Andrew Oleson, on March 1, 1920, sold 80 acres of land for $26,000 (Deed recorded in Book 26, page 323); that thereafter on November 25, 1921, he purchased said 80 acres for $14,800 (Deed recorded in Book 27, page 104); he says that the general depreciation in the fair market value between the 1st day of March, 1920, and November, 1921, is about the same proportion as the depreciation in value of the said 80 acres. Affidavit dated January 6, 1922.

Joseph W. Kellinghaus states that in pursuance of a written contract he purchased on February 26, 1920, a quarter section
254 for $58,400; that the fair market value of the same on April 1, 1921, would not exceed $36,000. (Book 25, page 651.) Affidavit dated December 31, 1921.

Joseph S. Uhing states that in pursuance of a written contract made in September, 1919, he purchased on February 28, 1920, 80 acres of land for $26,000; that the fair market value thereof on April 1, 1919, would not exceed $13,000. (Book 26, page 268.) Affidavit dated December 31, 1921.

N. P. Hansen states that in pursuance of a written contract made in May, 1919, he sold, February 25, 1920, a quarter section for

$36,000; that the fair market value thereof on April 1, 1921, would not exceed $24,000. (Book 26, page 249.) Affidavit dated December 30, 1921.

Oscar F. Hultquist states that in pursuance of a written contract made in June, 1919, he purchased on February 26, 1920, 200 acres for $60,000; that the fair market value of the above real estate on April 1, 1921, would not exceed $30,000. (Book 26, page 346.) Affidavit dated December 29, 1921.

William B. Ockander states that in pursuance of a written contract made in July, 1919, he purchased on January 19, 1920, 80 acres of land for $21,200; that the fair market value thereof on April 1, 1921, would not exceed $12,000. (Book 25, page 633.) Affidavit dated December 29, 1921.

Ludwig Otterstein states that on March 1, 1920, he sold a quarter section of land for $36,000; that the fair market value thereof on April 1, 1921, would not exceed $18,000. (Book 26, page 276.) Affidavit dated December 30, 1921.

Ida Zuhlke states that in pursuance of a written contract made in August, 1919, she sold on March 1, 1920, a quarter section of land for $39,000; that the fair market value of the same on April 1, 1921, would not exceed $18,000. (Book 26, page 275.) Affidavit dated December 30, 1921.

O. C. Anderson states that on July 7, 1920, as referee, he sold 80 acres of land for $28,440; that the fair market value of the same on April 1, 1921, would not exceed $16,000. (Book 28, page 92.) Affidavit dated December 30, 1921.

H. L. Morse states that in pursuance of a written contract dated May 17, 1919, he purchased on February 26, 1920, a quarter section for $48,000; that the fair market value thereof on April 1, 1921 would not exceed $24,000. (Book 25, page 604.) Affidavit dated December 29, 1921.

Andrew C. Johnson states that in pursuance of a contract made in December, 1920, he purchased on June 1, 1921, 82 acres for $14,602; that the fair market value thereof on April 1, 1921, would not exceed $12,000. (Book 28, page 150.) Affidavit dated
255 December 29, 1921.

Emil Zuhlke states that in pursuance of a written contract made in December, 1919, on February 10, 1920, he sold to Philip Graff 80 acres of land for $21,200; that the fair market value thereof on April 1, 1921, would not exceed $11,000. (Book 26, page 303.) Affidavit dated December 29, 1921.

Joseph Herzinger states that in pursuance of a written contract made in November, 1919, he sold to Alfred Miller a quarter section of land on March 1, 1920, for $48,000; that the fair market value thereof on April 1, 1921, would not exceed $32,000. (Book 26, page 369.) Affidavit dated December 28, 1921.

Emil Wegner states that in pursuance of a written contract made in August, 1919, he sold on March 31, 1920, 120 acres of land for $50,000; that the fair market value thereof on April 1, 1921, would not exceed $30,000. (Book 26, page 413.) Affidavit dated December 28, 1921.

Gerhard Schweers states that in pursuance of a written contract dated January 24, 1920, he sold on January 30, 1920, a quarter section of land for $54,000; that the fair market value thereof on April 1, 1921, would not exceed $27,000. (Book 26, page 426.) Affidavit dated December 28, 1921.

Michael Kerler states that in pursuance of a written contract made in June, 1919, he sold on March 1, 1920, 80 acres of land for $28,000; that the fair market value thereof on April 1, 1921, would not exceed $14,000. (Book 25, page 365.) Affidavit dated December 22, 1921.

J. F. Zajicek states that he is cashier of the Nebraska State Bank at West Point and Secretary-treasurer of the West Point National Farm Loan Association; that he knows of the sale of a quarter section of land by John Elsinger (Deed recorded in Book 26, page 278) in pursuance of a written contract entered into during the fall of 1919; that on September 24, 1921, the grantee applied for a loan and said land was appraised by the West Point National Farm Loan Association on September 26, 1921, for $12,000; that thereafter an examination was made for the Federal Land Bank and its examiner reduced the valuation to $11,200; that if he were to have purchased said land on April 1, 1921, he would not have given to exceed $12,000. Affidavit dated December 20, 1921.

Chas. W. Johnson states that in pursuance of a written contract made in September, 1919, he purchased on February 27, 1920, 160 acres of land for $52,000; that the fair market value thereof on April 1, 1921, would not exceed $44,000. (Book 25, page 643.) Affidavit dated December 22, 1921.

Adolph English states that in pursuance of a written con-
256 tract made March 19, 1919, he purchased a quarter section for $36,000; that the fair market value thereof on April 1, 1921, would not exceed $24,000. (Book 26, page 255.) Affidavit dated December 21, 1921.

W. E. Webb states that in pursuance of a written contract made on April 26, 1919, he purchased on March 27, 1920, a quarter section of land for $45,000; that the fair market value thereof on April 1, 1921, would not exceed $25,000. (Book 26, page 406.) Affidavit dated December 21, 1921.

Ferd Schlecht states that in pursuance of a written contract made in January, 1920, he purchased on the 26th day of January, 1920, 80 acres of land for $26,000; that the fair market value thereof on April 1, 1921, would not exceed $13,000. (Book 26, page 273.) Affidavit dated December 21, 1921.

Joseph Neiman states that in pursuance of a written contract dated July 9, 1919, he purchased on March 1, 1920, 80 acres of land for $33,600; that the fair market value thereof on April 1, 1921, would not exceed $16,000. (Book 26, page 352.) Affidavit dated December 21, 1921.

George Konopik states that in pursuance of a written contract made in January, 1920, he purchased on February 14, 1920, 80 acres of land for $22,000; that the same joins land already owned by him which induced him to pay more than the ordinary purchaser

would have paid; that the fair market value thereof on April 1, 1921, would not exceed $12,000. (Book 26, page 420.) Affidavit dated December 21, 1921.

J. F. Zajicek states that he is cashier of the Nebraska State Bank at West Point and secretary-treasurer of the West Point National Farm Loan Association; that he knows of the sale by William Neary of the quarter section of land for $20,000 (Deed recorded in Book 26, page 671), said conveyance being made in pursuance of a written contract made in the summer of 1920; that on April 1, 1921, the fair market value of said land would not exceed $7,000. Affidavit dated December 20, 1921.

W. F. Bolt states that in pursuance of a written contract made in September, 1919, he purchased on February 25, 1920, a quarter section for $56,000; that the fair market value of the same on April 1, 1921, would not exceed $24,000. (Book 26, page 298.) Affidavit dated December 21, 1921.

William H. Fillmer states that in pursuance of a written contract made in July, 1919, he purchased on February 26, 1920, 100 acres of land for $42,000; that the fair market value thereof on April 1, 1921, would not exceed $21,000. (Book 26, page 253.) Affidavit dated December 21, 1921.

257 Percy Nellar states that in pursuance of a written contract made in September, 1919, he purchased on February 26, 1920, a quarter section of land for $53,200; that the fair market value of the same on April 1, 1921, would not exceed $32,000. (Book 26, page 436). Affidavit dated December 21, 1921.

John Ahrens states that in pursuance of a written contract made in July, 1919, he purchased on February 27, 1920, a quarter section of land for $56,000; that the fair market value thereof on April 1, 1921, would not exceed $28,000. (Book 26, page 331.) Affidavit dated December 22, 1921.

Carl Steinbaugh states that in pursuance of a written contract made in August, 1919, he purchased on February 27, 1920, a quarter section of land for $48,000; that the fair market value thereof on April 1, 1921, would not exceed $40,000. (Book 25, page 590.) Affidavit dated December 22, 1921.

Carl Steinbaugh states that in pursuance of a written contract made in May, 1919, he purchased on February 21, 1920, a quarter section of land for $42,400; that the fair market value thereof on April 1, 1921, would not exceed $38,500. (Book 25, page 589.) Affidavit December 22, 1921.

John Jahnke states that in pursuance of a written contract made in July, 1919, he purchased on February 25, 1920, a quarter section of land for $52,000; that the fair market value thereof on April 1, 1921, would not exceed $24,000. (Book 26, page 284.) Affidavit dated December 22, 1921.

John Doffin states that in pursuance of a written contract made in May, 1919, he purchased on March 1, 1920, a quarter section of land for $15,200; that the fair market value thereof on April 1, 1921, would not exceed $8,000. (Book 26, page 351.) Affidavit dated December 21, 1921.

Charles Jugel states that in pursuance of a written contract made May 31, 1919, he sold on March 1, 1920, 80 acres of land for $24,000; that the fair market value thereof on April 1, 1921, would not exceed $16,000. (Book 26, page 296.) Affidavit dated December 21, 1921.

Marcus Peterson states that in pursuance of a written contract made in March, 1919, he sold on March 1, 1920, 80 acres of land for $16,195; that the fair market value thereof on April 1, 1921, would not exceed $150 per acre. (Book 26, page 282.) Affidavit dated December 20, 1921.

John Pribnow states that in pursuance of a written contract made in June, 1919, he purchased on February 16, 1920, 80 acres of land for $14,000; that the fair market value thereof on April 1, 1921 would not exceed $10,000. (Book 25, page 600.) Affidavit dated December 20, 1921.

258 Henry F. Pribnow states that in pursuance of a written contract made in June, 1919, he purchased on February 16, 1920, 80 acres of land for $14,000; that the fair market value thereof on April 1, 1921, would not exceed $10,000. (Book 25, page 601.) Affidavit dated December 20, 1921.

Alfred Anderson states that in pursuance of a written contract made March 30, 1920, he purchased on March 1, 1921, a quarter section of land for $54,230; that the fair market value thereof on April 1, 1921, would not exceed $32,000. (Book 28, page 112.) Affidavit dated December 20, 1921.

John Henry Witte states that in pursuance of a written contract made in September, 1919, he purchased on February 27, 1920, a quarter section for $55,200; that the fair market value thereof on April 1, 1921, would not exceed $32,000. (Book 25, page 626.) Affidavit dated December 20, 1921.

Carl Spering states that in pursuance of a written contract made in August, 1919, he purchased on March 1, 1920, 200 acres of land for $57,280; that the fair market value thereof on April 1, 1921, would not exceed $35,000. (Book 26, page 373.) Affidavit dated December 19, 1921.

Carl Spering states that in pursuance of a written contract made in August, 1919, he sold on March 1, 1920, 80 acres of land for $20,000; that the fair market value thereof on April 1, 1921, would not exceed $10,000. (Book 26, page 333.) Affidavit December 19, 1921.

Robt. Roggenbach states that in pursuance of a written contract made in October, 1919, he purchased on March 3, 1920, a quarter section of land, for $40,920, purchasing it for one of his sons and probably paying more than the ordinary purchaser would have paid; that the fair market value thereof on April 1, 1921, would not exceed $21,000; (Book 25, page 658). Affidavit dated December 19, 1921.

O. E. Bishop states that in pursuance of a written contract made in November, 1919, he purchased on February 17, 1920, 80 acres of land for $27,000; that the fair market value thereof on April 1,

1921, would not exceed $16,000. (Book 26, page 285.) Affidavit dated December 19, 1921.

H. W. Faubel states that in pursuance of a written contract dated April 11, 1919, he sold on April 1, 1920, a quarter section of land for $45,000; that the fair market value thereof on April 1, 1921, would not exceed $24,000. (Book 26, page 418.) Affidavit dated December 19, 1921.

Archie M. Ford states that in pursuance of a written contract made in December, 1919, he sold on February 27, 1920, 80 acres of land for $22,000; that the fair market value thereof on
230 April 1, 1921, would not exceed $16,000. (Book 25, page 598.) Affidavit dated December 22, 1921.

J. C. Elliott states that he was county attorney of Cuming county; that during the year 1921, he participated in eight hearings for the purpose of appraising estates to determine the amount of inheritance tax therefrom; that during the year 1921 the results of such hearings and appraisements were as follows:

2 tracts	$325	per acre.
1 "	200	" "
2 "	190	" "
1 "	180	" "
6 "	175	" "
1 "	150	" "
1 "	125	" "
1 "	100	" "

that many of the lands thus appraised were readily salable in 1918 and 1919 from $350 to $400 per acre.

Affiant further says that all of the affidavits mentioned above are now available for inspection by any of the parties interested in this hearing. Harry W. Scott.

Subscribed and sworn to before me this 25th day of July, 1922. D. M. Amsberry, Secretary of State. (Seal.)

240 Thereupon Mr. Clark, for the railroad companies, offered the Board and its counsel, Mr. Lamaster, to produce the field men who collected all of the data from the different counties covering sales and mortgages as hereinbefore set forth, to the end that they might be cross-examined. Whereupon Mr. Lamaster stated, in substance, that he did not question the accuracy of the figures but was inclined to believe that the the transfers included the consummation of deals initiated when financial conditions were better. Mr. Osborne, of the State Board, then stated: "I do not doubt but what that is true, and a correct copy of those records." Thereupon the following colloquy occurred:

"Mr. Clark: Now, Mr. Secretary, in my petition I ask that the Counties be notified to be here at this hearing and that their valuations be raised. Was there any notice sent to them as to that?

Mr. Osborne: I want this to go in the record: They are cited to appear here next Monday.

Mr. Clark: Was there any notice sent out to them of this complaint?

261 Mr. Osborne: No sir, because the abstracts are not all in.

Mr. Dressler: Do I understand the Counties have been notified to appear sometime?

Mr. Osborne: Yes.

Mr. Clark: When is that hearing to be?

Mr. Osborne: Next Monday.

Mr. Clark: Does that apply as to all the counties in the State or part of them?

Mr. Osborne: Applies to what is here.

Mr. Clark: Now, may I ask the Board and the Tax Commissioner not to certify the results of your equalization as to these complaints or any other to the County Clerks until after the Complainants have time to look at your decision and determine their course.

Mr. Osborne: They have already been certified, Mr. Clark.

Mr. Clark: Won't you issue another certificate?

Mr. Osborne: You mean the values of this road?

Mr. Clark: I am speaking now of your certificates you send out of your equalization results as provided by statute.

Mr. Osborne: No, not yet.

Mr. Clark: May I ask that you not certify them out until after your final decision and we decide what course we wish to pursue.

262 Mr. Osborne: How long a time do you want?

Mr. Clark: The statute gives us ten days. We will get at it as soon as we learn your decision.

Mr. Osborne: You desire ten days then?

Mr. Clark: I do not want it certified out until we decide what course we will take.

Mr. Osborne: You mean ten days after the levy is made?

Mr. Clark: No.

Mr. Dressler: Ten days after you announce your decision.

Mr. Clark: The statute provides you shall certify the results of these hearings out to the County Clerks.

Mr. Lamaster: Are you through with Mr. Scribner?

Mr. Magaw: Yes."

Whereupon Mr. Lamaster, for the State Board of Equalization and Assessment, introduced before the Board its Exhibit "18" in the words and figures following:

Final Assessment for 1922.

Counties.	Per acre abst. ave.	% increase or decrease of rural real estate.	Ave. per acre as equalized.	Grand total value as equalized.
Adams	$71.83	none	$71.83	$49,901,860
Antelope	48.78	none	48.78	37,590,849
Banner	6.20	#14%	7.06	3,835,087
Blaine	4.79	—3%	4.65	3,727,270
Boone	71.10	none	71.10	43,420,985
Box Butte	9.03	none	9.03	15,181,545
Boyd	42.06	#3%	43.32	19,245,096
Brown	8.00	#5%	8.40	10,602,342
Buffalo	41.95	#10%	46.14	52,088,040
Burt	119.87	—2%	117.47	44,952,913
Butler	96.69	none	96.69	50,457,625
Cass	111.46	none	111.46	56,528,300
Cedar	83.35	#13%	94.18	58,662,732
Chase	12.27	none	12.27	9,836,036
Cherry	4.57	#8%	4.93	30,896,766
Cheyenne	22.86	none	22.86	30,709,890
Clay	77.74	none	77.74	42,203,432
Colfax	112.77	none	112.77	41,169,435
Cuming	110.40	#9%	120.33	56,039,548
Custer	19.67	#4%	20.45	50,027,640
Dakota	97.56	—2%	96.51	23,266,286
Dawes	10.31	none	10.31	19,702,486

Final Assessment for 1922.—Continued.

Counties.	Per acre abst. ave.	% increase or decrease of rural real estate.	Ave. per acre as equalized.	Grand total value as equalized.
Dawson	38.27	#5%	40.94	42,795,009
Deuel	25.06	none	25.06	12,941,116
Dixon	66.34	#21%	80.27	32,390,709
Dodge	118.73	none	118.73	64,324,160
Douglas	144.64	none	144.64	355,166,756
Dundy	9.88	#6%	10.47	12,228,429
Fillmore	85.31	none	85.31	44,906,463
Franklin	38.39	none	38.39	21,250,325
Frontier	16.69	none	16.69	15,759,423
Furnas	30.87	—4%	29.63	26,066,615
Gage	80.19	none	80.19	71,709,425
Garden	8.39	#10%	9.22	13,321,038
Garfield	10.60	#15%	12.10	6,190,020
Gosper	28.86	none	28.86	11,861,105
Grant	3.82	none	3.82	5,865,784
Greeley	36.07	#4%	37.51	19,891,378
Hall	57.91	#6%	61.38	46,134,847
Hamilton	86.73	none	86.73	43,103,785
Harlan	32.06	none	32.06	20,328,430
Hayes	10.46	#20%	12.55	7,114,146
Hitchcock	18.48	none	18.48	14,954,973
Holt	13.93	#10%	15.32	32,564,618
Hooker	3.70	none	3.70	4,267,327
Howard	45.58	none	45.58	25,913,982

	Jefferson	74.59	—6%	70.11	42,269,034
264	Johnson	89.03	—4%	85.46	28,494,410
	Kearney	50.47	none	50.47	24,982,895
Keith		12.53	none	12.53	17,233,192
Keva Paha		9.58	none	9.58	6,015,425
Kimball		17.37	none	17.37	18,742,915
Knox		48.24	#5%	50.65	46,900,444
Lancaster		101.22	none	101.22	170,339,640
Lincoln		38.47	#19%	10.07	34,902,404
Logan		8.24	none	8.24	4,886,332
Loup		6.02	#10%	6.62	3,026,587
Madison		86.23	none	86.23	53,009,645
McPherson		3.52	none	3.52	2,421,750
Merrick		64.79	—4%	62.19	31,105,099
Morrill		10.10	none	10.10	16,740,085
Nance		62.65	#4%	65.15	25,272,925
Nemaha		94.88	none	94.88	33,899,810
Nuckolls		59.52	none	59.52	34,125,865
Otoe		100.09	#4%	104.09	57,949,892
Pawnee		69.23	none	69.23	27,998,786
Perkins		15.23	#6%	16.14	13,574,352
Phelps		49.45	none	49.45	27,009,000
Pierce		58.96	#20%	70.75	35,633,674
Platte		98.45	none	98.45	61,702,285
Polk		97.41	none	97.41	35,854,434
Red Willow		22.27	—4%	21.37	20,315,977
Richardson		90.15	#2%	91.95	46,134,559
Rock		8.22	none	8.22	7,761,035
Saline		93.57	none	93.57	51,087,759

Final Assessment for 1922.—Continued.

Counties.	Per acre abst. ave.	% increase or decrease of rural real estate.	Ave. per acre as equalized.	Grand total value as equalized.
Sarpy	107.68	—3%	104.44	27,043,608
Saunders	104.07	none	104.07	69,510,311
Scotts Bluff:	Abstract not received.		Estimated total	31,000,000
Seward	94.30	none	94.30	47,995,150
Sheridan	7.15	none	7.15	20,389,645
Sherman	35.13	none	35.13	19,723,939
Sioux	6.42	none	6.42	12,190,880
Stanton	88.42	#5%	92.84	31,878,341
Thayer	62.57	none	62.57	35,026,775
Thomas	3.85	—15%	3.27	3,776,531
Thurston	91.52	none	91.52	25,875,008
Valley	38.94	none	38.94	22,269,230
Washington	119.07	#4%	123.83	40,093,005
Wayne	105.85	none	105.85	39,353,980
Webster	44.65	none	44.65	25,806,245
Wheeler	12.10	none	12.10	5,433,420
York	92.17	none	92.17	50,388,755
Arthur	4.23	none	4.23	2,597,065
Total				$3,190,838,127

Compiled by W. H. Osborne, State Tax Commissioner; H. W. Scott, Deputy Tax Commissioner.

265 TESTIMONY OF E. F. MORGAN.

The witness Morgan, Assistant Auditor of the Chicago, Burlington & Quincy Railroad Company, was recalled and further cross-examined by Mr. Lamaster: $19,595,025.26 of the cash dividends of $44,925,917.00 were paid out of current income of 1921 and the remainder of the cash dividend paid out of surplus. The first dividend in 1921 was two per cent. on capital stock of $110,839,100.00. Another dividend of five per cent. on $170,000,000.00 capital stock. Another dividend of five per cent. on $170,000,000.00 and fifteen per cent. on $170,000,000.00. In 1921 $6,014,948.11 was transfer-ed to profit and loss. Operating expenses include taxes, maintenance, repairs and renewals, but exclude additions and betterments. We absolutely follow the Interstate Commerce Commission's accounting rules in arriving at this figure. I include Nebraska taxes $2,207,533.85 and United States taxes $654,978.11. The Interstate Commerce Commission rules provide that all taxes, state, municipal and federal, are chargeable to railway tax accruals. $63,209.49 is federal capital stock tax, and $591,768.61 income tax. All taxes except assessments for public improvements are deductible from income.

Mr. Clark then offered the final order and judgment of the State Board of Equalization and Assessment for the taxes for 1922. This order was subsequently made on the 2nd day of August, 1922.

266 Mr. Clark, at the close of the testimony adduced before the State Board of Equalization and Assessment for 1922, made the following request:

"Mr. Clark: I now want to ask the Board not to certify out under Section 4 of Article 11, under the Revenue Law, the result of these equalization hearings until the Complainants have had time to examine the final judgment entered in this case and determine the course to pursue. Within the ten days allowed by statute.

Mr. Lamaster: I suppose that is up to the Board, but I am satisfied they will give you that time.

The Chairman: Yes, if that is the requirement of the law. This hearing will now stand adjourned, subject to the call of the Board."

The order of the State Board of Equalization and Assessment made on the 2nd day of August, 1922, dismissing the complaints of the railroad companies, including the Chicago, Burlington & Quincy Railroad Company, is in the following language:

ORDER OF STATE BOARD DISMISSING COMPLAINTS.

"Whereas the Union Pacific Railroad Company, the Chicago, Burlington and Quincy Railroad Company, the Chicago and North Western Railroad Company, and the St. Joe & Grand Island Railroad Company, have filed a complaint with this Board, wherein they complain against the valuation heretofore fixed by this Board

267 upon their property:

And whereas on the 25th day of July a full hearing was granted said railroads as requested in said complaints:

And whereas this Board has cited before it approximately 35 counties to show cause why the real estate of such counties should not be increased:

And whereas after a full hearing the Board entered a final order increasing by a percentum the real estate of 28 counties, and decreasing 11 counties, and making no change in 55 counties:

Therefore be it resolved that the complaints of each of the complaining railroad companies, and the requests therein made, be dismissed.

Upon motion the resolution was unanimously adopted.

Dated August 2, 1922."

The State, nor the State Board of Equalization and Assessment adduced no evidence on the hearing of the complaints of the railroad companies other than the affidavit of Deputy Tax Commissioner Scott and the final assessment for 1922 and the tabulation of the final assessment for 1922 compiled by W. H. Osborne, Jr., Tax Commissioner, and H. W. Scott, Deputy Tax Commissioner, hereinbefore set out in full.

268 SUMMARY OF C., B. & Q. EXHIBIT 8.

On the hearing before the three Judges the plaintiff introduced and there was received and read in evidence C. B. & Q. Exhibit "8," being an affidavit of Pollock Parmele, revealing that affiant had checked and analyzed the affidavit of Harry W. Scott, Deputy Tax Commissioner, with respect to sales in Cuming County, Nebraska.

Affiant, amongst other things, stated that he secured from the County Assessors' records of Cuming County, Nebraska, the 1920, 1921 and 1922 tax assessments against every piece of real estate referred to in Scott's affidavit. The correct assessments of that real estate, with the consideration and description, are shown in a three page statement made by the affiant and attached to the affidavit; that affiant prepared a correct tabulation showing a comparison of the assessments, sale consideration, estimate of value and acreage of the tracts of land referred to in the Scott affidavit and the same is as follows:

"Cuming County, Nebraska.

Number of transfers or sales	84
Number of acres sold	10,968
Consideration as shown by deeds	$3,085,072
Average sale price per acre	$281
Market value in 1921	1,863,452
Average value per acre	$169
Assessed value same land 1920	1,535,500
Average assessed value per acre 1920	$140
Assessed value same land 1921	1,337,380
Average assessed value per acre 1921	$122
Assessed value same land 1922	1,276,980
Average assessed value per acre 1922	$116
Per cent of 1920 assessment to sale value	49.7%
" " " 1921 " " " "	43.3%
" " " 1922 " " " "	41.3%
Per cent of 1920 assessment to value by state 1921	82.4%
" " " 1921 " " " " " 1921	71.7%
" " " 1922 " " " " " 1921	68.5%"

239 The defendants, to maintain the issues on their part, offered and there was received in evidence the following, to-wit:

DEFENDANTS' EXHIBIT 1.

Affidavit of U. G. Powell, identified as Defendants' Exhibit "1," to which counsel for the Chicago, Burlington & Quincy Railroad Company objected for the reason that the State Board of Equalization should not be permitted, in that manner, to impeach their own official acts.

"Judge Lewis: We think it is competent as an admission aside from the question of what weight should be attached to it."

Which said Defendants' Exhibit "1" is as follows:

"*I*, Ulyses G. Powell, after being duly sworn deposes and says:

1. That his residence is Lincoln, Nebraska; that he is an accountant of more than thirty years' experience. That he was for more than twelve years chief accountant for the Nebraska State Railway Commission; that as chief accountant he had direct charge over the annual Reports filed with the Commission by the plaintiff.

2. That he has investigated the Report filed with the Commission by the Engineering Department of the Commission, which shows the plaintiff's valuation of the Company's property as of July 1st, 1909 and reported by the Department to the Commission.

3. That the total value of plaintiff's railroad in the State of Nebraska as of July 1st, 1909 exclusive of equipment and material and supplies was $182,076,114.60.

270 That he has read the affidavit of Mr. E. F. Morgan introduced in these proceedings and finds that the additions and betterments to plaintiff's railroad and structure facilities located in

the State of Nebraska from July 1st, 1913 to December 31st, 1921 is shown by said affidavit to be $10,388,405.11; that he has estimated the expenditures for additions and betterments to plaintiff's property from July 1st, 1909 to July 1st, 1913, both included on the same ratio of expenditures as was put in place from July 1st, 1913 to December 31st, 1921, and found the sum to be in round figures $4,000,000.00.

5. That he has read the Annual Report of plaintiff company to its stockholders as of December 31st, 1921, and from said report finds that the book cost of the rolling stock owned by plaintiff company as of December 31st, 1921 is shown to be $101,562,975.45; that he has pro rated the book cost of the rolling stock to the State of Nebraska on the following bases and finds the percentage and sums to be the same as shown below:

Equipment Apportioned to Nebraska.

On Car Mileage Basis (20.89%)	$21,216,505.56
On Miles Operated (30.57%)	31,047,801.58
On Lines Owned (31.76%)	32,256,400.99

6. That he has calculated the working assets that the plaintiff company would normally require for the transaction of its business in the State of Nebraska, would be 5% of the total value of the road and equipment as mentioned in this affidavit.

271 7. That the investigation made by your affiant as mentioned in this affidavit, results in a total valuation of plaintiff's steam railroad property located in the State of Nebraska as of December 31st, 1921, calculated on the several bases herein mentioned results in the following amounts:

Equipment	Apportioned on	Car Mileage basis	$228,565,076.53
"	"	Miles operated "	238,887,937.35
"	"	Lines Owned "	240,156,966.73

Further affiant sayeth not."

"Judge Woodrough: Well, that situation is not very different from the situation presented to me in the trial on the merits (referring to Chicago & Northwestern 1921 case) and then I took up that affidavit that seemed to me that there wasn't enough of the report reflected so that I could be sure that that is what the railroad company did actually report, or how they reported it or how much of it was really a declaration by the railroad company."

* * * * * * *

"Mr. Lamaster: We will offer in connection with Mr. Powell's affidavit page 472 of the Fourth Annual Report of Nebraska State Railway Commission, being Defendants' Exhibit 3. This shows the valuation for 1909 of the C. B. & Q. Company property. These are entitled "Respondent's Valuations.' This shows a total valua-

tion after taking the several items, right of way, and station
272 grounds, real estate, grading, and so forth, shows $200,624,-576.79. Now this is for the Burlington for that year. Mr. Powell has taken that figure and supplemented it with the additions and betterments as reported annually to the State Railway Commission. It seems to me that the affidavit would not mean that it was his own estimate. However, if it is not clear in that regard we want to change it before it is submitted to the Court, to make it correctly state the facts. He does not in any way claim responsibility for those figures except to say that they are taken from the annual report."

Said report being in the words and figures as follows:

273 DEFENDANT'S EXHIBIT 3.

Physical Value for July 1, 1909, of Chicago, Burlington & Quincy Railroad Company's Property.

Miles of Roadway, 2,850.34. Miles of Track, 3,478.96.

Subject.	Respondent's valuation repro. new.
1. Right of Way and Station Grounds	$25,177,999.71
2. Real Estate	292,985.12
3. Grading	21,196,163.23
4. Tunnels	64,225.88
5. Bridges, Trestles & Culverts	7,729,268.21
6. Ties	6,190,856.52
7. Rails	10,135,371.60
8. Frogs and Switches	332,174.98
9. Track Fastenings and other Material	1,931,202.33
10. Ballast	4,077,295.65
11. Track Laying and Surfacing	4,333,545.73
12. Roadway Tools	64,059.05
13. Fencing—Right of Way	761,136.49
14. Crossings & Signs	460,331.76
15. Interlocking and other Signal Apparatus	150,275.35
16. Telegraph and Telephone Lines	687,410.04
17. Station Bldgs. and Fixtures	1,813,949.32
18. General Office Bldgs. and Fixtures	144,735.63
19. Shops, Engine Houses and Turntables	1,287,573.62
20. Shop Machinery and Tools	482,459.35
21. Water Stations	764,970.17
22. Fuel Stations	254,395.32
23. Grain Elevators	10,000.00
26. Electric Light Plants	151,332.00
30. Miscellaneous Structures	1,152,332.47
31. Adaptation and Solidification of Roadway	7,354,507.08

Subject.	Respondent's valuation repro. new.
32. Engineering and Superintendence	3,882,640.31
33. Steam Locomotives	4,670,050.00
35. Passenger Cars	2,150,998.63
36. Freight Cars	8,589,101.80
37. Work and Misc. Equip.	462,340.00
38. Rent and repairs of Equip. during Const.	953,525.56
39. Inspection and Purchase of Equip.	158,724.90
40. Transportation of Men and Material	13,522,037.69
41. Stores and Supplies for Nebraska	1,563,721.30
42. General Expenditures—Contingencies	67,670,879.99
Grand Total	$200,624,576.79

NOTE.—Railroad report of total mileage does not check with the mileage found by the department and so reported. Using above mileage, total value per mile of roadway equals $70,386.19, per mile of track equals $57,667.97.

274 The defendants offered and there was received and read in evidence, defendant's Exhibit 7, being the affidavit of U. G. Powell, as follows:

DEFENDANT'S EXHIBIT 7.

"Ulysses G. Powell being first duly sworn, deposes and says, that he is the same Ulysses G. Powell who has submitted affidavits in these proceedings. He further says as follows:

1. That he is familiar with the unit costs of material and labor used by steam railroads that operated lines of road in the State of Nebraska during the past ten years.

2. That the average cost of material used in the construction of roadway and equipment facilities in the State of Nebraska, for the year 1921 was between 155 and 165 per cent of costs of similar material in 1913.

3. That the plaintiff company paid $30.35 per gross ton for new open hearth 90 lb. per yard steel rails laid by plaintiff on its system of railroads in the state of Nebraska during the year 1911. That the plaintiff company paid $48.00 per gross ton for the same class and weight of rail laid in Nebraska during the year 1921.

4. That the plaintiff company paid for ties used in operation and construction of its railroad in the state of Nebraska during the years 1911 and 1921 as follows:

	1911.	1921.
275 New oak ties untreated	$.61	$1.47
New pine ties treated	.77	1.47

Ulysses G. Powell."

276 DEFENDANT'S EXHIBIT A.

The defendants offered their Exhibit "9", being testimony given by Mr. Don L. Love, one of the Directors of the Lincoln Joint Stock Land Bank, adduced by the defendants during the trial on the merits of the 1921 tax suit of the Chicago & Northwestern Railway Co., in substance as follows: Am one of the directors and the treasurer of the Lincoln Joint Stock Land Bank since 1918 when it was organized; have been connected with the Lincoln Trust Company for ten years prior thereto; the Joint Stock Land Bank loans on real estate secured in Iowa and Nebraska; now have about $23,000,000 of loans; we are limited under the law to 50% of the appraised value which is established by federal appraisers appointed by the Board in Washington; after the appraisal is made it goes to the Executive Committee of the Bank and if they approve the loan is made; limit is $50,000 to one person and $100 per acre on land. In 1917 land values advanced very rapidly in Nebraska culminating in the fall of 1919 or the spring of 1920; during that period the increase was from 50% to 100%; decline began early in spring of 1920 and is still continuing; practically no sales of land after middle of 1920 unless they were forced sales; the average crop of 1920, in the fall of that year or winter of 1921, would hardly pay expenses so there was no net profit; the general decline in everything and especially farm products began about the middle of 1920; by the
277 fall of 1920 farm products had fallen off, corn from nearly $2 per bushel to twenty cents and other products not altogether in proportion, the corn standing the greatest decline of any. In making loans the income from the land is one of the things taken into account. I would say that the 1920 crop was sold at an actual loss considering the cost of production and that condition continued until spring of 1922. The loan end of the real estate business was lively during 1920. The interest rates on farm loans from the spring of 1920 up until and during 1921 were very high. The rate during the pre-war period was five per cent and it went up, beginning in 1918, to as high as seven per cent and a commission besides, until the middle of 1921 when it began to go down again. In fixing values for the purpose of loans we tried to get, as near as possible, what the land value was in 1916 and we did not use the peak prices; would say that the 1920 crop was sold at an actual loss over cost of production and this condition continued until spring of 1922; our loans were limited somewhat because our source of revenue is the sale of 5% bonds and until November, 1921 we were unable to sell them except at such discount we could not afford to do business. Think our bank furnished the railroad companies some data at their request as to our loans.

DEFENDANT'S EXHIBIT 10.

The defendants next offered and there was received and read in evidence, without objection, their Exhibit 10, being the testimony of Herman A. Penner, adduced during the trial on the merits of

the 1921 tax suit of the Chicago & Northwestern Railway
278 Co.; have resided in Omaha 7 years and am Assistant secretary of the Peters Trust Company which is engaged to a large extent in making farm loans. We have approximately $36,000,000 in farm and city loans; I would say $30,000,000 in farm loans; Nebraska is our main state although we operate in other states; am correspondent for Prudential Insurance Company for this territory. A year ago we returned to the old valuations of five years ago, because we found it difficult to arrive at a fair value of farm lands; there was nothing selling; farms could not be appraised according to income and the Prudential Insurance Company adopted the policy of going back to the valuations of five years ago; we could not use the high priced valuations and had nothing else to base our valuations on. The price of corn declined to 15 cents a bushel. We have never made a loan to exceed $100 per acre.

The defendants offered in evidence their exhibit 13, a compilation of 58 affidavits from 20 counties widely scattered in Nebraska, showing a statement of value by residents being owners of land, in these several counties and giving a total acreage assessed value, for 1922, of 74.28% of the average actual value of the property. These affidavits were secured through the County Attorneys of the several counties in Nebraska.

279 The defendants then offered and there was received and read in evidence Defendant's Exhibit 14, consisting of 19 affidavits from land owners concerning the actual value of land in ten counties of the State of Nebraska, showing the assessed valuation of the same land and that the assessed value of these lands for 1922 is 66.85% of the actual value according to the testimony of the affiants.

The defendants offered and there was read in evidence the affidavit of Harry W. Scott, Assistant Tax Commissioner for the State of Nebraska, same being identified as Defendant's Exhibit 15. This exhibit refers solely to the 58 affidavits heretofore introduced as Defendant's Exhibit 13. The average value of the land in the 20 counties covered by the 58 affidavits, as revealed by the affidavits, is $71.15 per acre and the average assessed value of these lands for 1922 is $52.85 per acre, making an average of assessed value 74.28% of actual value.

The defendants offered and there was read in evidence Defendants Exhibit 16, being a compilation of the affidavits of County Clerks and Registers of Deeds respectively, in 40 Nebraska counties, showing the transfers of rural real estate by warranty deeds, sheriff's deeds and referee's deeds during the period from July 1, 1921 to July 1, 1922, not including any transfer where the consideration was merely nominal or for love and affection, and including no transfers of real estate where the land conveyed was less than twenty
280 acres. These witnesses include Cuming County but the counties are fairly and well distributed over the state. During the period from July 1, 1921 to July 1, 1922 the assessed value of the lands is 60.95% of the selling value as shown by the consideration in the deeds. The transfers from January 1st to July

1st, 1922 gives a percentage of 65.40%; that is, the assessed value is 65.40% of the selling value.

From July 1, 1921, to July 1, 1922.

Acres conveyed	429,099
Consideration	$24,233,555.00
Assessed valuation	$14,869,361.00
Average selling price per acre	$56.47
Average assessed value per acre	$34.42

DEFENDANTS' EXHIBIT 17.

The defendants offered and there was received and read in evidence, without objection, Defendant's Exhibit 17, an affidavit of A. M. Clark, which is in the following language: "A. M. Clark, being first duly sworn, on oath deposes and says that he is the duly elected, qualified and acting assessor of Adams County, Nebraska, that he has read the affidavit of Mr. Charles C. Parmelee, filed in this cause, and that the statement in Mr. Parmele's affidavit that the affiant said that in an address by W. H. Osborne to the county assessors in the spring of 1922, Mr. Osborne stated that where a farm was worth $125 actual value per acre, that they should assess it at $80-$95 per acre, which would be about 70 or 75% of the
281 actual market value, is untrue, and that affiant never heard W. H. Osborne make that statement or that statement in substance, that he never stated to Mr. Parmalee that he had heard W. H. Osborne make such statement, or that in substance, and that Mr. Parmalee's statement is untrue.

Affiant further states that the only instructions that he has had from W. H. Osborne as State Tax Commissioner were to assess property at its fair market value in accordance with the law.

Affiant further says as showing the correctness of his assessments in Adams County, Nebraska, he cites the following instances of sales.

In November, 1922, a section of land about three miles from Kenesaw was sold at private sale for about 50¢ per acre less than its 1922 assessed value. On December 14th, 1922, an 80 acre tract about six miles from Hastings was sold at partition sale for about $5,000, and was assessed for 1922 at $6,500, that on the same day a 160 acre tract about six miles form Hastings was sold at about $12,000, and the 1922 assessed value of the same land was approximately $13,000.

Affiant further says that several instances have been called to his attention during the past year, where city property in Adams County has been sold for less than its 1922 assessed valuation."

DEFENDANTS' EXHIBIT 18.

The defendants then offered and there was read in evidence, without objection, Defendant's Exhibit 18, a telegram from W.
282 C. Hill, County Assessor of Chase County, to the defendant Osborne, date December 18, 1922, as follows: "W. H. Osborne

State Tax Commissioner Clerk U. S. District Court Omaha Nebr. Affidavit personal opinion. No understanding with anybody. (Signed) W. C. Hill, Co. Assessor."

DEFENDANTS' EXHIBIT 19.

The defendant then offered and there was read in evidence, without objection, Defendant's Exhibit 19, being an affidavit of Madge Disbrow, County Clerk of Furnas County, in the following language: "I, Madge Disbrow, County Clerk of Furnas County, do hereby certify that I did not read the affidavit carefully that was signed by me November 9, 1922 in regard to the assessment of real estate in Furnas County and that I refute the statement signed by me that instructions from the State Tax Commissioner's office were to assess real estate at less than full value. The instructions received by me from said Tax Commissioner W. H. Osborne were to assess all real estate at full market value".

DEFENDANTS' EXHIBIT 20.

The defendants offered and there was received and read in evidence, without objection, Defendant's Exhibit "20", being an affidavit of John Scott, County Assessor of Custer County, in the following language: "John Scott, being first duly sworn, says that he is the duly elected, qualified and acting County Assessor of Custer County, Nebraska; that on or about the 16th day of November, 1922, he was approached by a Representative of the Chicago, Burlington and Quincy Railroad Co., whose name this affiant does not
283 now recall, who ask- this affiant at what percent of the actual value farm lands were assessed, in his opinion, in Custer County, Nebraska, for the year 1922. This affiant replied, that in his opinion, farm lands were assessed at 60 per cent of their actual value, whereupon this affiant was ask- by said representative of said Railroad Co., if the affiant would sign an affidavit to that effect, and upon the affiant's replying in the affirmative, the said representative of the said Railroad Co., produced a type written affidavit which this affiant signed without reading and without knowing further as to its contents, as affiant did not have his glasses or spectacles and it is very difficult for affiant to read without them.

Just today affiant learned that in signing said affidavit, he may have signed a statement which said, that he as said County Assessor, had received instructions from W. H. Osborne, State Tax Commissioner, to assess Custer County farm lands for the year 1922, at 60 per cent of their actual value; but this affiant says that he did not receive any such instructions from the said Tax Commissioner, and did not receive any instructions whatever from the said State Tax Commissioner, directing or advising this affiant, as to what per cent of their actual value farm lands should be assessed; and this affiant further says that he did not knowingly make any statement to the contrary."

Defendants then offered and there was read in evidence,
284 without objection, Defendant's Exhibit 21, an affidavit of Mr. Arterburn, County Assessor of Perkins County, to the effect that he received no instructions from the State Tax Commissioner to assess real estate in Perkins County at less than its actual value for the purposes of taxation.

Defendants then offered and there was received in evidence, without objection, defendant's exhibit 22, being an affidavit of Frank W. Irish, County Treasurer of Box Butte County, Nebraska, identifying publication of tracts of land offered for sale in Box Butte County for taxes in 1922, showing 468 tracts of city and village property and 630 tracts of rural real estate.

DEFENDANTS' EXHIBIT 23.

Defendants then offered and there was received in evidence, without objection, defendant's exhibit 23, as follows:

"Be it remembered, that heretofore, to wit: on the 6th day of August, 1912, the following entry was made in the records of the Nebraska State Railway Commission, in the matter of the physical valuation of the Chicago, Burlington & Quincy Railroad Company, to wit:

Lincoln, Nebraska, August 6, 1912.

* * * * * * *

The hour of nine o'clock having arrived, the Commission resumed the hearing of matters pertaining to the physical valuation of the Chicago, Burlington & Quincy Railroad Company, as per adjournment taken August 3rd. The appearances were the same as at the preceding session. The evidence was taken in shorthand, being reported by Miss Emma J. Hedges, official reporter for the
285 Commission, and on the conclusion of the hearing the railroad company was given until November 1st to submit its brief covering the question at issue. (Signed) A. B. Allen, Secretary.

Approved: (Signed) H. J. Winnett, Chairman.

STATE OF NEBRASKA,
Lancaster County, ss:

I, Mary E. Sheehan, assistant secretary of the Nebraska State Railway Commission, hereby certify that the attached is a true copy of entry in the minutes of the proceedings of the Nebraska State Railway Commission of date August 6, 1912, in the matter of the physical valuation of the Chicago, Burlington & Quincy Railroad Company, as the same is of record in this office. I further certify that I have made a careful examination of the records of the Nebraska State Railway Commission and the foregoing is the last order made with respect to the physical valuation of the Chicago, Bur-

lington & Quincy Railroad Company in Nebraska, and that no final order with respect to such valuation appears of record.

In testimony whereof I have hereunto set my hand and affixed the seal of the Nebraska State Railway Commission, this 16th day of December, 1922. Mary E. Sheehan, Assistant Secretary Nebraska State Railway Commission." (Seal.)

286 At this time, it being five-forty o'clock P. M., an adjournment was taken until tomorrow, Tuesday, December 19, 1922, at nine-thirty o'clock A. M.

Tuesday, December 19, 1922—
nine-thirty o'clock a. m.

All parties present as before. Further proceedings as follows:

The defendants offered and there was received and read in evidence page 70 of the "Statistics of Railways in the United States" relating to "Taxes and Assessments for the Year Ended Dec. 31, 1920—Class I Carriers and Their Nonoperating Subsidiaries," published by the Interstate Commerce Commission as follows:

(Here follows extract from I. C. C. Report, marked page 287.)

288 These statistics show the per mile taxation of railroads in the respective states but not the rates of levies. For instance, Alabama is taxed $560 per mile; Arizona $776 per mile; Connecticut $1,977 per mile, and then on down until we come to Nebraska, $667 per mile.

289 DEFENDANT'S EXHIBIT 26 & 27.

Defendants then offered and there was received and read in evidence, without objection, defendant's exhibits 26 and 27, being parts of pages 102 to 109 inclusive, of report of Department of Agriculture for the State of Nebraska for 1921, and Bulletin No. 114, as follows:

289a Summary Corn.

Year.	Acreage.	Av. yield.	Total No. bu.	Value.
1918	6,954,061	17.7	123,298,649	$160,288,243
1919	7,039,811	25.8	182,250,823	227,813,528
1920	7,560,355	33.8	255,544,816	127,772,408
1921	7,418,700	28.1	208,732,212	45,921,086

Summary Winter Wheat.

Year.	Acreage.	Av. yield.	Total No. bu.	Value.
1918	3,015,844	11.1	33,520,047	$67,040,094.00
1919	3,716,159	14.8	55,280,969	110,561,938.00
1920	3,334,547	17.4	58,106,940	92,971,104.00
1921	3,761,683	14.4	54,340,841	46,189,714.85

Extract from S. C. C. Report.

STATISTICS OF RAILWAYS IN THE UNITED STATES.

nd Assessments for the Year Ending Dec. 31, 1920— Class 1 Carriers and Their Nonoperating Subsidiaries.

Class 1 Carriers	Subsidiary to Class 1 Carriers	STATE	TOTAL AMOUNT	Per Mile of Line	Class 1 Carriers
281,258,069	$1,492,464	Nebraska	$ 4,159,281	$ 677	$4,159,281
		Nevada	1,543,485	942	1,543,485
2,548,239	--------	New Hampshire	1,005,430	827	1,005,430
1,572,112	--------	New Jersey	11,188,775	5,292	10,710,925
3,912,137		New Mexico	2,467,111	915	2,467,111
7,179,287	7,368	New York	17,860,538	2,271	17,603,616
3,344,091	200	North Carolina	2,128,612	552	2,124,627
1,974,929		North Dakota	4,997,344	969	4,997,344
164,331	1,041	Ohio	16,841,495	2,048	16,840,721
2,166,797		Oklahoma	5,462,847	864	5,461,508
2,481,022		Oregon	2,721,507	1,060	2,721,457
3,844,290		Pennsylvania	9,342,090	945	9,281,217
16,323,371	98,375	Rhode Island	585,359	2,966	585,359
9,420,707	1,641	South Carolina	1,950,592	623	1,950,592
7,855,052		South Dakota	3,718,490	900	3,718,490
6,179,658	8,812	Tennessee	2,583,797	702	2,582,441
2,179,504	4,286	Texas	5,097,866	364	5,097,087
3,788,386		Utah	1,855,786	907	1,855,786
1,724,961		Vermont	450,543	608	450,543

...t from I. C. C. Report.

RAILWAYS IN THE UNITED STATES.

...ar Ending Dec. 31, 1920— Class 1 Carriers and Their Nonoperating Subsidiaries.

...sidiary Class 1 ...riers	STATE	TOTAL AMOUNT	Per Mile of Line	Class 1 Carriers	Subsidiary to class 1 Carriers
92,464	Nebraska	$ 4,159,281	$ 677	$4,159,281	----------
------	Nevada	1,543,485	942	1,543,485	----------
------	New Hampshire	1,005,430	827	1,005,430	----------
	New Jersey	11,188,775	5,292	10,710,925	$477,850
	New Mexico	2,467,111	915	2,467,111	
7,368	New York	17,860,538	2,271	17,603,616	256,922
200	North Carolina	2,128,612	552	2,124,627	3,985
	North Dakota	4,997,344	969	4,997,344	
1,041	Ohio	16,841,495	2,048	16,840,721	774
	Oklahoma	5,462,847	864	5,461,508	1,339
	Oregon	2,721,507	1,060	2,721,457	50
	Pennsylvania	9,342,090	945	9,281,217	60,873
98,375	Rhode Island	585,359	2,966	585,359	
1,641	South Carolina	1,950,592	623	1,950,592	
	South Dakota	3,718,490	900	3,718,490	
8,812	Tennessee	2,583,797	702	2,582,441	1,356
4,288	Texas	5,097,866	364	5,097,087	779
	Utah	1,855,786	907	1,855,786	
	Vermont	450,543	608	450,543	

[illegible]	1,479	Washington	[illegible]	[illegible]	[illegible]	
7,578,625		West Virginai	3,879,092	1,195	3,869,566	9,526
9,753,406		Wisconsin	6,875,961	995	6,874,066	1,895
3,611,616		Wyoming	1,212,958	686	1,212,958	
3,358,579		Districy of Columbia	79,120	2,291	79,120	
4,283,757		United States Government				
			50,542,597	226	50,001,370	541,227

credit of $1,596 not localized by States. These amounts are included in the income accounts.

Statement No. 39- Taxe

STATE	TOTAL AMOUNT	TOTAL Per Mile of Line
Total, United States	$232,750,533	$1,262
Alabama	2,548,239	560
Arizona	1,572,112	776
Arkansaw	3,912,137	948
California	7,186,655	1,071
Colorado	3,344,291	729
Connecticut	1,974,929	1,977
Delaware	165,372	493
Florida	2,166,797	542
Georgia	2,491,022	455
Idaho	3,844,290	1,500
Illinois	16,421,746	1,421
Iddiana	9,422,348	1,328
Iowa	7,855,052	808
Kansas	6,188,470	688
Kentucky	2,183,792	624
Louisianna	3,788,386	971
[illegible]	1,72[illegible] 961	[illegible]

Massachusetts	3,339,127	1,618
Michigan	7,578,625	1,083
Minnesota	9,753,406	1,151
Mississippi	3,611,616	942
Missouri	3,358,579	457
Montana	4,283,757	871

1
Excludes $1,064,545 Canadian Taxes, $447 Cuban Taxes,

Summary.

	Cattle.		Hogs.		Shee
	Number.	Value.	Number.	Value.	Number.
00	2,094,875	$213,943,510	2,038,236	$61,147,080	278,821
72	2,673,993	124,806,234	1,806,856	42,715,495	218,958
42	2,598,057	113,778,114	1,707,092	28,204,860	236,402
27	2,411,818	79,875,741	1,712,396	18,658,993	183,778

	Hogs.		Sheep and goats.	
	Number.	Value.	Number.	Value.
	,038,236	$61,147,080	278,821	$3,345,852
	,806,856	42,715,495	218,958	1,223,902
	,707,092	28,204,860	236,402	1,959,740
	,712,396	18,658,993	183,778	839,318

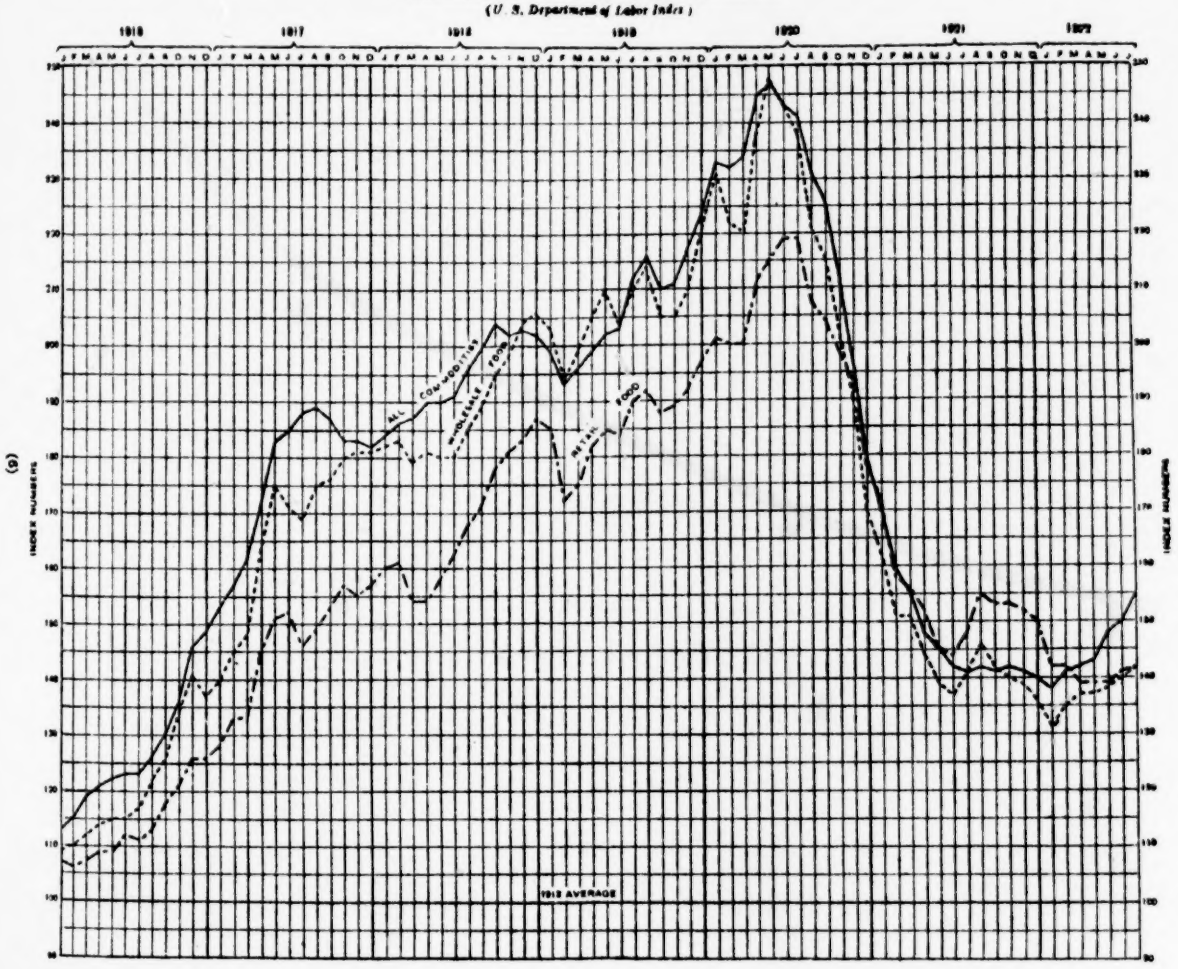
Defendant's Exhibit 28

Ex 28

COMPARISON OF WHOLESALE AND RETAIL FOOD PRICE INDEX NUMBERS.

WITH INDEX OF ALL COMMODITIES AT WHOLESALE.

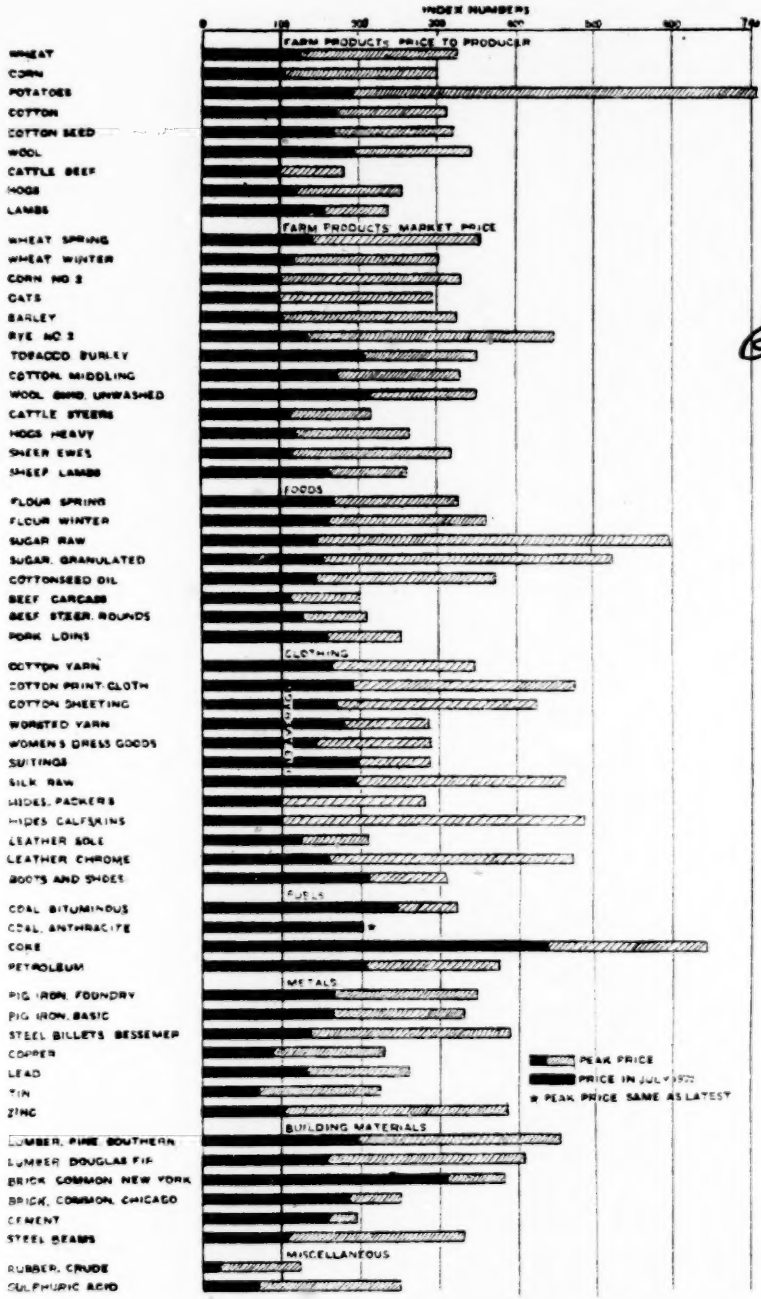
(*U. S. Department of Labor Index.*)



Authority: Survey of Current Business, U.S. Dept. of Commerce, No. 13, Page 6, September 1922

COMPARISON OF PRESENT WHOLESALE PRICES WITH PEAK AND PRE-WAR.

(Relative prices 1913=100)



Authority: Survey of Current Business, U.S. Dept. of Commerce, No. 13, Page 4, September 1922.

Summary Spring Wheat.

Year.	Acreage.	Av. yield.	Total No. bu.	Value.
1918	811,815	11.9	9,721,793	$19,443,586.00
1919	667,572	8.5	5,699,458	11,113,943.10
1920	258,448	9.5	2,453,476	3,680,214.00
1921	205,059	11.3	2,317,881	1,854,324.80

Summary All Wheat.

Year.	Acreage.	Av. yield.	Total No. bu.	Value.
1918	3,827,659		43,241,840	$86,483,680.00
1919	4,383,731		61,234,602	121,675,881.00
1920	3,592,995		60,560,446	96,651,318.00
1921	3,966,742		56,658,722	48,044,039.00

Summary Oats.

Year.	Acreage.	Av. yield.	Total No. bu.	Value.
1918	2,530,877	22.2	56,215,487	$33,729,200.00
1919	2,133,475	32.8	70,133,995	44,184,416.85
1920	2,400,062	34.6	83,037,162	33,214,864.80
1921	2,585,084	27.1	70,273,858	12,649,294.44

Alfalfa.

Year.	Acreage.	Av. yield.	Total No. tons.	Value.
1918	1,164,941	2.1	2,527,834.5	$63,195,862.00
1919	1,180,324	2.7	3,214,999.1	64,299,982.00
1920	1,232,947	2.86	3,527,689.5	35,276,895.00
1921	1,195,562	2.36	2,828,757.0	19,801,299.00

Wild Hay.

Year.	Acreage.	Av. yield.	Total No. tons.	Value.
1918	2,587,678	.88	2,285,010.2	$43,415,193.00
1919	2,771,234	1.02	2,842,304.8	45,476,866.88
1920	2,315,359	1.02	2,319,777.4	18,558,219.20
1921	2,256,315	.84	1,897,490.0	11,384,940.00

(Here follows Summary marked side folio page 2896.)

290 Defendants then offered and there was received in evidence, without objection, defendant's exhibits 28 and 29, being as follows:

(Here follows Defendants' Exhibits 28 and 29, marked side folio pages 290½ and 291.)

292 The defendant then offered and there was received and read in evidence, without objection, exhibit 31, being an extract from the report of the Chicago, Burlington & Quincy Railroad Company to the Nebraska State Railway Commission showing dividends paid during 1921, which is as follows:

(NOTE.—The information here offered from said report is found in the affidavit of E. F. Morgan, found at side page 265 hereof.)

293 DEFENDANTS' EXHIBIT 32.

The defendants offered and there was received and read in evidence, without objection, Defendant's Exhibit 32, an affidavit of the defendant W. E. Osborne, Jr., to which is attached, as a part thereof, its exhibits "A," "B" and "C." The substance of the affidavit is that affiant has occupied the office of Tax Commissioner of Nebraska since about April 28, 1921; that prior thereto he was Secretary of the State Board of Equalization of the State of Nebraska for more than two years and is generally familiar with the methods and procedure of taxation in said state and with property values in Nebraska for three years last past. Affiant has charge and custody of the files and records of the State Board of Equalization containing full information of the assessments and taxation of all railroads operating in Nebraska; that the assessment of plaintiff's property used in conducting transportation for the years 1911 to 1922 is shown on Exhibit "A." The assessment of all railroads within the state is shown for the same years in Exhibit "B"; that prior to 1921 the assessed value of all property shown upon Exhibit "C" was entered at one-fifth of the actual value; that there has been a gradual increase in the assessed value of railroad property throughout said period due to the increase in the value of all items of property used in the construction of railroads and in the increase in the value of the right-of-way; the same is true of all property values shown by Exhibit "C";
294 there has been no discrimination against the property of plaintiff or railroads in general. At the time of the assessment of plaintiff's property by the State Board of Equalization plaintiff was at once notified, on the 15th day of June, 1922, but the assessment value as determined by the Board was by affiant certified to the County Clerks of the State on or about June 30, 1922, and if plaintiff is now allowed to enjoin the collection of the taxes levied against its property the accounts of the state and every municipality in every county traversed by plaintiff's road will be thrown into confusion, utmost difficulty will be suffered and in many school districts there will be no funds with which to operate the schools and they will have to be suspended a considerable portion of the school year, and other departments of local and state governments will also suffer great loss and damage. Affiant has given considerable study to the value of real estate and its improvements and in his best judgment the peak of prices prevailed about the fall of 1919, and from that time down to the assessment period, April 1, 1922, farm lands and improvements,

in affiant's judgment, depreciated in value approximately 33 1/3%. Affiant denies that at any time there has been any conspiracy on the part of the State Board of Equalization or the individual members thereof to place a value upon plaintiff's property, or the property of the state in general, at any other figure than the directions given to the Board by the statutes of this state, namely, at its actual cash value. Affiant further denies that there has ever been any understanding between affiant and the individual members of the
295 State Board of Equalization, with the assessing authorities of this state, other than that cont-ined in the uniform written instructions sent out to the assessing authorities: "The only instructions that I am permitted to give you in valuing this class of property is that directed to you by the statutes namely at it- actual value, and as defined in the Revenue Law, Actual Value means its actual value in the market in the ordinary course of trade."

EXHIBIT A TO OSBORNE'S AFFIDAVIT.

"Chicago, Burlington & Quincy Railroad.

EXHIBIT A,

Being Memoranda of Assessed Values of the Chicago, Burlington & Quincy Railroad in the State of Nebraska as Shown by the Records in the Office of the Tax Commissioner for the Years 1911 to 1922, Inclusive.

1911	$119,441,865.00	
1912	119,441,865.00	
1913	119,441,865.00	
1914	119,441,865.00	
1915	119,441,865.00	
1916	121,934,740.00	
1917	121,932,625.00	
1918	121,978,640.00	
1919	122,015,515.00	9%
1920	131,765,605.00	Decrease 13%
1921	131,639,875.00	over 1919.
1922	137,589,782.00	

Increase since 1911 is 13%."

296 EXHIBIT "B" TO OSBORNE'S AFFIDAVIT.

Being Memoranda of Assessed Values of Railroads in the State of Nebraska as Shown by the Records in the Office of Tax Commissioner for the Years 1911 *to* 1922, *Inclusive, the Same Being the One-fifth of Actual Values, Save and Except the Years* 1921 *and* 1922, *Which is Actual Value.*

1911	54,806,915.00	
1912	55,050,286.00	
1913	55,829,328.00	
1914	55,945,074.00	
1915	55,945,067.00	
1916	55,833,234.00	
1917	56,855,453.00	
1918	56,827,782.00	
1919	56,831,076.00	
1920	60,851,333.00	8 per cent inc.
1921	367,695,100.00	Actual value.
1922	315,629,880.00	

Valuations shown above, from 1911 to 1920, inclusive, under Nebraska statutes, are on a twenty per cent basis of actual value.

297 EXHIBIT "C" TO OSBORNE'S AFFIDAVIT.

Being Memoranda of the Assessed or One-fifth Total Value of All Property as Shown by the Grand Assessment-roll of the State of Nebraska from 1911 *to* 1921, *Inclusive, Save and Except for the Years* 1921 *and* 1922, *Which is the Full and Actual Value or Five Times That of the Other Years.*

	Grand Total.	
1911	$415,670,075	
1912	463,371,889	
1913	470,690,414	
1914	471,940,195	
1915	481,931,238	
1916	500,827,274	
1917	528,891,424	
1918	567,947,914	
1919	568,921,570	
1920	762,284,909	34% Increase.
1921	3,305,477,292	13% Decrease.
1922	3,191,705,290	3% Decrease.

Valuations shown above, from 1911 to 1920, inclusive, under Nebraska statutes, are on a twenty per cent basis of actual value.

The plaintiff objected to the admission of the foregoing affidavit of W. H. Osborne, concerning the intention of the members of the Board, as incompetent.

"Judge Lewis: I don't think it is necessary to have a ruling on this."

The defendants then offered and there was received and read in evidence, without objection, Ex. 33, being an affidavit of W. H. Osborne, Jr., as follows:

DEFENDANT'S EXHIBIT 33.

Affidavit.

STATE OF NEBRASKA,
County of Lancaster, ss:

W. H. Osborne, being first duly sworn, on oath deposes and says that in connection with the study of the affidavit of A. W. Scribner filed in this case, affiant secured from Mr. Scribner the original cards showing the conveyances for Nance County and Merrick County, total figures for which are given in Mr. Scribner's affidavit.

There were twenty-five transfers in Nance County as shown by the cards, 16 of which transfers were in 1921 and 9 in 1922. The total consideration of the 16 conveyances in 1921 was $414,800, and the total assessed value for 1921 was, on the same tracts, $183,978, giving a percentage of assessed value to the actual value of 44.5%. The total consideration for the 9 conveyances in 1922 was $164,690, and the total assessed value for 1922 on the same tracts of land was $85,249, making a ratio of assessed value to actual value of 52.9%.

Affiant says that he selected these two counties for consideration for the reason that Mr. Scribner stated that the relation of assessed value to sale value in the fifty-three counties records of which were compiled by him, was 46.5%. His compilation shows Merrick County to have a ratio of 46% and Nance County to have a ratio of 47%, or an average of 46.5% or the same ratio as all the counties under his showing. Analysis by years shows the fallacy of comparing 1921 with 1922, prices of land having continued to decline.

Affiant further says that there were thirty-four transfers in Merrick County as shown by the cards, 29 of which transfers were in 1921 and five of which were in 1922. The total consideration of the 29 conveyances in 1921 was $519,105, and the total assessed value for 1921 on the same tracts was $239,825, giving a percentage of assessed value to the actual value of 44.5%. On the five conveyances in 1922 the total consideration was $52,200, while the total assessed value of the same tracts was $32,750, or a percentage of 62.7%. (Signed) W. H. Osborne.

Subscribed and sworn to before me this 18 day of December, 1922, R. C. Hoyt, Clerk of the District Court. (Seal.)

301 The defendant introduced and there was read in evidence, without objection, affidavit of W. H. Osborne, defendant herein, as follows:

"I, W. H. Osborne, do on oath deny that I ever at any time gave any instructions to W. C. Hill, County Assessor, of Chase County, to assess real estate or any other property, at anything less than its actual cash value."

After an extended colloquy between counsel for the respective parties, in which members of the court participated in part, with respect to reports made by representatives of plaintiff, in 1909, to the Nebraska State Railway Commission, Mr. Root stated, in substance: There is no difficulty in submitting to the court briefly and so that everyone could understand, the valuations contended for by the railroad company and the representatives of the State Railway Commission concerning the value of the plaintiff's property in 1909. Mr. Root also stated: "I have a blue print which shows the valuation reproduction new as contended for by the engineers of the Commission and the engineers of the railroad company." This blue print was identified as defendants' exhibit 35 and was, by defendants, without objection, offered and received in evidence, and is as follows:

(Here follows Defendants' Exhibit 35, marked side folio page 302.)

303 The defendants then offered and there was received in evidence, without objection, their exhibits 36 and 37, being copies of pages 26 and 27 of the Annual Report of the Chicago, Burlington and Quincy Railroad Company to its stockholders for the year ending December 31, 1921, which are as follows:

(Here follow Exhibits 36 and 37, marked side folio page 304.)

305 The defendants then offered and there was received and read in evidence, without objection, Defendant's Exhibit "38," being page 95-A of the Annual Report of the plaintiff for the year 1909 to the Nebraska State Railway Commission showing the traffic and mileage statistics of Nebraska, same being as follows:

(Here follow Defendants' Exhibits 38 and 39, marked side folio pages 305½ and 306.)

307 The defendants then offered and there was received and read in evidence, without objection, Defendants' Exhibit 39, being page 111 of the volume last above referred to, giving the mileage of the entire lines of the plaintiff and the mileage in the several states, which revealed that the total mileage operated upon the entire system was 9020.82, and in Nebraska the mileage was 2843.11. (Ex. "39" returned at page 176 hereof.)

TRAFFIC AND MILEAGE STATISTICS—STATE OF Nebraska—CONCLUDED.

[FOR COMPANIES (OTHER THAN SWITCHING AND TERMINAL) MAKING OPERATING REPORTS.]

CLASSIFICATION.	ITEM.	TOTAL.
LOCOMOTIVE MILEAGE:		
REVENUE SERVICE—		
37. Freight Locomotive-Miles,	3767735	
38. Passenger Locomotive-Miles,	3767047	
39. Mixed Locomotive-Miles,	273826	
40. Special Locomotive-Miles,	2809	
41. Switching Locomotive-Miles,	1405579	
42. TOTAL REVENUE LOCOMOTIVE MILEAGE,	9206996	9206996
43. Nonrevenue Service Locomotive-Miles,		332077
CAR MILEAGE:		
REVENUE SERVICE—		
Freight Car-Miles—		
44. Loaded,	87212609	
45. Empty,	31877159	
46. Caboose,	3512835	
47. TOTAL FREIGHT CAR-MILES,	122602603	122602603
Passenger Car-Miles—		
48. Passenger,	10900661	
49. Sleeping, Parlor, and Observation,	6105715	
50. Other Passenger-Train Cars,	7663673	
51. TOTAL PASSENGER CAR-MILES,	24670049	24670049
Special Car-Miles—		
52. Freight—loaded,	32047	
53. Freight—empty,	39	
54. Caboose,	2325	
55. Passenger,	11378	
56. Sleeping, Parlor, and Observation,	1278	
57. Other Passenger-Train Cars,	342	
58. TOTAL SPECIAL CAR-MILES,	47409	47409
59. TOTAL REVENUE CAR MILEAGE,		147320461
60. Nonrevenue Service Car-Miles,		2072552
TRAIN MILEAGE:		
REVENUE SERVICE—		
61. Freight Train-Miles, M.P.R.R.M. 1003	46.7 3464029	
62. Passenger Train-Miles, M.P.R.R.M. 564.	49.6 3680667	
63. Mixed Train-Miles,	3.6 271473	
64. Special Train-Miles,	.3 2570	
65. TOTAL REVENUE TRAIN MILEAGE,	100.2 7418734	7418734
66. Nonrevenue Service Train-Miles,		262043

Dept 5 4 38
GWP

The defendants offered and there was received and read in evidence, without objection, Exhibit 40, being pages 237, 238 and 239 of Vol. 58 of the Reports of the Interstate Commerce Commission under the title "Revenue Needs of Carriers in Western Group," the same being as follows:

DEFENDANTS' EXHIBIT 40.

"Revenue Needs of Carriers in Western Group.

The western carriers ask that their rates be fixed on a basis that will permit them to earn a net railway operating income of $537,833,024, which represents a return of 6 per cent on a book cost of $8,963,883,753[18]. (Footnote as follows: [18]This represents the book cost of 59 class I systems, 53 class II, 41 class III, and 32 switching and terminal companies. The figures include additions and betterments to October 31, 1919, the estimated cost of equipment allocated by the government to the carriers and the book cost of material and supplies as of October 31, 1919.) The extent to which the rates of transportation now in effect fall short of yielding the return sought by these carriers is indicated by the following
308 comparison:

Net railway operating income as sought by the carriers		[19]$537,883,024
Standard return		[20]401,215,984
Actual net railway operating income year ended October 31, 1919	$293,212,870	
Less corporate income charges net debit	28,027,616	
		[19]265,185,254
Adjusted net railway operating income year ended October 31, 1919		[19]226,831,658
Finally adjusted net railway operating income year ended October 31, 1919		[19]184,939,759

The figure $226,831,658 represents the actual income, as adjusted in conformity with the questionnaire. The figure $184,939,759 reflects adjustments subsequent to the questionnaire.[21]

(Foot notes as follows: [19] Includes 59 class I systems, 53 class II, 41 class III, and 32 switching and terminal companies; aggregate mileage, 138,243.74) ([20] Represents the average net railway operating income of class I railroads, excluding switching and terminal companies, for the years 1915, 1916 and 1917.)

(Foot note as follows: [21] The adjustment based on the question-aire reflected changes in certain items, as follows: Increase in railway operating revenues, $678,907; increase in railway operating expenses, $35,689,425; increase in railway tax accruals, $7,733,128; decrease in equipment rents, $4,523,553, net; decrease in joint facility rents, $304,163, net; increase in corporate items, $437,666, net. The adjustment made subsequent to the preparation of the questionnaire changes embraced the following: Estimated increased mail pay, $13,513,600; railway operating expenses, $21,092,697 representing increased wages and $21,254,298 representing increased fuel costs; railway tax accruals, $11,242,557, based upon increased income taxes incident to greater income if rate increase is granted; estimated increased allowance to private-car owners, $1,815,947.)

It will be observed that on the basis of the predictions of the carriers, the net railway operating income for this district will
309 be approximately $350,000,000 lower than the annual sum to which they claim to be entitled. They estimated that a general increase of approximately 24 per cent in freight revenue was required to return the amount claimed.

During the six years ended 1917 the railway operating income of the carriers averaged $386,000,000 annually; during the four years ended 1915 it averaged $347,000,000 annually; during the years 1916 and 1917 it averaged $464,000,000 annually; in 1918 it dropped to $330,320,330; and in 1919 it declined further to $302,857,219. During the six years ended 1917 the operating ratio ranged from 62.69 to 67.68; in 1918 it rose to 78.14, in 1919 to 80.96, and for the first four months of 1920 to 86.06.

The reports of the class I carriers of this district to us for the first four months of 1920 show a net railway operating income of $56,104,721. Deducting the railway-mail pay applicable to prior years, stated by the carriers to have been taken into account in these months, in amount $27,790,388, leaves $28,314,333 as the actual result of operations. Adding to this figure $1,209,969 to cover net railway operating income of carriers other than class I, produces $29,524,302.

During the period 1914 to 1919 the net railway operating income of the first four months of each year averaged 23.29 per cent of the aggregate for the year. Equating the actual results of
310 the first four months of 1920 on this basis produces an estimated net railway operating income of $126,768,149, the net railway operating income of an assumed period of twelve months on the basis of operating costs which prevailed during the first four months of 1920. Subtracting from this figure $3,789,728, which is the estimate of the carriers for increased allowances to private car owners, and $21,254,298, their estimate of increased fuel costs for the year, reduces it to $101,724,123.

The amount of freight and other transportation revenue, excluding passenger, mail and express reported to us by class I carriers for the first four months of 1920, aggregated $498,001,006. To this amount $16,462,794 has been added to cover revenues of carriers other than class I carriers, resulting in a gross estimated revenue of $514,463,800. During the years 1915 to 1919 inclusive, freight and other transportation revenue, excluding passenger, mail, and express for the first four months of each year, averaged 28.52 per cent of the aggregate for the year. Equating the actual revenues of the first four months of 1920 upon this basis produces $1,803,870,266, as the estimated revenues of an assumed period of twelve months based on the operations of the first four months of 1920.

The number of ton-miles of revenue freight for class I carriers in the western group during the past eight years is indicated below:

311

Year.	Revenue ton-miles.
1912	[22]82,888,199,102
1913	[22]96,986,976,238
1914	[22]92,284,883,754
1915	[22]90,945,571,633
1916 (June 30)	[22]112,156,323,212
1916 (December 31)	[23]123,250,722,123
1917	[23]138,044,743,597
1918	[23]142,335,128,414
1918	[23]130,606,713,832

The carriers estimate that the wage award made by the Labor Board under date of July 20, 1920, will add approximately $234,840,000 annually to the operating expenses of the carriers in the western group. This is equivalent to 11.2 per cent of the total railway operating revenue of the western carriers, as finally adjusted by them for the constructive year."

The defendants then offered and there was received and read in evidence, without objection, their exhibits 41 and 42, being application of Chicago, Burlington & Quincy Railroad Company to the Interstate Commerce Commission for authority to issue additional stocks and bonds. The material parts being as follows:

312 DEFENDANTS' EXHIBIT 41.

Before the Interstate Commerce Commission.

In the Matter of the Application of THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY for an Order of the Interstate Commerce Commission Authorizing the Issue of $60,000,000 Additional Capital Stock, $109,000,000 of 6% First and Refunding Mortgage Bonds, and Approving the Purposes and Uses Thereof.

Application.

The application of Chicago, Burlington & Quincy Railroad Company respectfully shows:

1. The full name of applicant is "Chicago, Burlington & Quincy Railroad Company," and its post office address is 547 West Jackson Boulevard, Chicago, Illinois.

2. Hale Holden is the president of the applicant, T. S. Howland is the secretary and treasurer thereof, and O. M. Spencer is its principal attorney. The post office address of these officers is 547 West Jackson Boulevard, Chicago, Ill.

The Board of Directors which has authorized the issuance of the securities covered by this application is as follows:

(Foot notes as follows: [22] Compiled by the Commission's Bureau of Statistics. [23] From carriers' exhibits.)

Ralph Budd	St. Paul.
Charles W. Bunn	St. Paul.
Claude G. Burnham	Chicago.
Robert J. Dunham	Chicago.
Howard Elliott	New York.
Louis W. Hill	St. Paul.
Hale Holden	Chicago.
Thomas S. Howland	Chicago.
Charles E. Perkins	Burlington.
Frederick H. Rawson	Chicago.
Jackson E. Reynolds	New York.
Oliver M. Spencer	Chicago.
William W. Baldwin	Chicago.

313 3. Applicant is a corporation of the State of Illinois under and subject to the general incorporation laws of that state. It was originally created and organized under special charters granted by the legislature of Illinois to various companies which were consolidated under the present name by articles of consolidation of date July 9, 1856, and again of date June 24, 1864. Of date June 24, 1914, its existence was renewed and extended as a corporation under the general incorporation law pursuant to an act of the legislature of Illinois June 7, 1911. Applicant is not incorporated in other states, but is authorized to do business in ten other states under authority of the laws of Illinois and of said states. The railroads in other states which it now operates, were originally constructed by companies incorporated under *under* the laws of such states, whose roads and franchises and other property have been acquired by applicant through fee simple conveyances from such corporations executed under the authority both of the laws of Illinois and of each state in which the properties are situated.

4. Applicant operates a system of railroads in the States of Illinois, Wisconsin, Minnesota, Iowa, Missouri, Nebraska, Kansas, Colorado, South Dakota, Wyoming and Montana.

5. The nature of this application and the purposes and uses of the proposed issue of securities are as follows: (*a*) approval of applicant's proposed First and Refunding Mortgage to be dated February 1, 1921, to the First National Bank of the City of New York and Walter S. McLucas as trustees, to secure bonded indebtedness as provided therein. Copy of proposed mortgage is attached hereto;

(*b*) as a necessary basis for the bonds provided by said
314 mortgage, authorization of the issue by applicant of $60,000,000 additional capital stock and distribution of the same pro rata among its stockholders, thus transferring to capital account $60,000,000 of applicant's surplus (*c*) authorization of the issue of $109,000,000 in its First and Refunding Mortgage bonds, to reimburse applicant's treasury for moneys heretofore expended out of earnings in additions and betterments to applicant's railway operating property; $80,000,000 of said bonds, or the proceeds thereof, to be held in applicant's treasury free to be used for any lawful purpose, including dividend purposes, the balance of said bonds, $29,-

000,000 to be disposed of by the applicant only for future additions and betterments to its railway operating property.

6. The said proposed issue of securities is believed to be for a lawful object within applicant's corporate purposes, compatible with the public interest, appropriate for and consistent with the proper performance by applicant of service to the public as a common carrier, reasonably necessary and appropriate for such purposes, and otherwise within the terms of Section 20*a* of the Interstate Commerce Act. Among the facts relied on to support the application are the following:

(1) Applicant is a railroad corporation subject to the general railroad act of Illinois and owns and operates a system of railroads extending from Chicago westerly to St. Louis, Kansas City, Omaha, Denver, Billings, St. Paul and Minneapolis, of an aggregate operated mileage of about 9,372 miles. Its railroads extends through the highly developed agricultural and manufacturing states of Illinois, Wisconsin, Iowa, Missouri, Nebraska and Colorado, and
315 the agricultural, stock raising and mining states of Wyoming, South Dakota, and Montana, with many branches and feeders. Its system also taps the extensive coal fields of southern Illinois, which furnishes a very large ton-age. It has extensive and valuable terminals in the Cities of Chicago, St. Louis, Kansas City, Omaha, Denver and St. Paul, and has a very large and well established interchange of traffic with its connections. The property investment of applicant (December 31, 1919) in road and equipment was $492,716,639.10, with a total property investment of $535,210,890.33. On that date it had a corporate surplus of $241,781,197. Depreciation on its equipment at a rate unusually high as compared with other railroads, including the period of federal control, has been charged to the amount of $48,514,239.62. If the application herein is granted, there will remain a corporate surplus of $101,781,197.

Applicant's total capitalization is only $278,889,100 of which the capital stock outstanding amounts to $110,839,100 and the funded debt in the hands of the public to $168,050,000. The stock and bonds in the hands of the public per mile of road are $31,164.

There are three existing mortgages on applicant's railroads; (1) Nebraska Extension Mortgage, covering 1,471 miles in Nebraska, Colorado, Kansas and Wyoming, under which $18,294,000 of four per cent bonds are outstanding; (2) Illinois division mortgage, covering about 1,646 miles in Illinois, Iowa, Wisconsin and Minnesota, under which $84,427,000 of three and one-half and four per cent bonds are outstanding; (3) General Mortgage dated March 2, 1908, covering substantially applicant's railway property as then existing, under which $65,247,000 of bonds are outstanding,
316 and $139,744,000 are reserved under the terms of the mortgage for retiring prior obligations. The said mortgage is so limited that not over $300,000,000 can at any one time be outstanding thereunder. The bonds issued and to be issued under the said General Mortgage are also prohibited thereby to bear interest at over five per cent per annum. Before the passage of the Transportation Act,

1920, applicant had authority from the Public Utilities Commission of the State of Illinois to issue under its General Mortgage and to sell bonds to an aggregate amount in excess of $109,000,000 for the purpose of reimbursing its treasury for earnings theretofore expended for betterments and improvements to the property. But under market conditions prevailing for several years it has not been advisable or prudent to put on the market bonds bearing five per cent interest not redeemable before due, and it does not now appear that in the reasonable future it will be advisable or prudent to put said bonds on the market.

Besides this, were said $109,000,000 of General Mortgage Bonds issued and sold, it would practically close the said mortgage by reaching substantially the limit of bonds which may be issued and outstanding at any time thereunder. And the said Nebraska Extension and Illinois Division Mortgages are already closed. Therefore were said $109,000,000 of General Mortgage Bonds issued and sold, applicant would soon find it necessary in order to finance its additions and betterments, to execute a new mortgage on its railway properties subordinate to all of said liens, including the said $109,000,000 of General Mortgage Bonds. Under those conditions a new mortgage would be seriously objectionable, because it could not be
317 made eligible security for savings banks, trust companies, insurance companies, and similar investors, and these facts would require applicant to pay under such new mortgage an extravagant rate of interest.

Applicant therefore finds it an absolute necessity to its future expansion and growth as a railway system to issue a new mortgage which will provide for financing its additions and betterments for a considerable period. And if applicant is to put out a new mortgage and secure reasonable terms and rates of interest thereunder it must provide for the issue of said $109,000,000 of bonds under a new mortgage in lieu of issuing them under the General Mortgage. Indeed applicant would expect to exchange bonds under the Refunding mortgage for those already outstanding under the General Mortgage in order to make the bonds under the proposed new mortgage a security salable to savings banks, insurance companies, and like investors.

Applicant's said General Mortgage is seriously objectionable in respect of limiting to five per cent per annum the rate of interest on bonds issued thereunder and in not providing for a redemption privilege before due. It is quite essential, in order for applicant to secure the best terms for loans under market conditions from time to time, that the rate of interest and terms of redemption on each series of bonds be fixed from time to time as issued; and such rate of interest and terms of redemption will necessarily be subject as future bonds are issued to the approval of this commission.

The laws of the principal investment states for corporate securities provide in order to be legal investments for savings banks, etc., that bonds shall not exceed three times the capital stock of the issuing corporation. It is, therefore, imperative in order to make a refund-

ing mortgage and provide for adequate future financing that
318 applicant increase its capital stock. By the proposed increase to approximately $170,000,000 applicant will have under the laws of such investment states a basis for a bond issue up to approximately $510,000,000 instead of approximately $332,000,000 as at present. $510,000,000 is a necessary limit to enable applicant to finance its necessary additions and betterments for a reasonable term of years.

(2) Since July 1, 1901, applicant has invested in additions and betterments to its operating property the sum of $189,070,776.12 out of earnings from operations which justly belonged to its stockholders, at least to the extent of two-thirds thereof or more. For the most part these additions and betterments added to the fair value of applicant's property and to the earning capacity thereof fully in proportion to the expenditures, only a small portion of the expenditures having been in nonrevenue producing additions and betterments. A statement of said expenditures and an itemization thereof according to the primary accounts of the commission are hereto attached and referred to. During this period applicant has not increased the aggregate of its stock or bonds, substantially, financing all of its improvements and betterments work out of earnings. This policy has resulted in the abnormal capitalization heretofore shown and is a policy not just to the stockholders and of which they oppose the continuance.

Within the period from July 1, 1901, to December 31, 1919 applicant has invested from earnings in additions and betterments, road extentions, retiring bonded debt, purchase of securities of other companies, and other items properly chargeable to capital
319 account the sum of $191,348,478.49 which has not been capitalized.

Applicant's net income applicable to dividends for the past ten and one-half years has been as follows:

Year ended June 30th.	Amount applicable.
1910	$13,308,746.18
1911	16,843,762.73
1912	14,106,753.78
1913	19,430,745.89
1914	17,114,407.14
1915	17,288,912.63
1916	25,628,590.57
1916*	18,250,254.69
1917**	28,009,001.57
1918**	15,947,881.56
1919**	16,561,229.51
Total, 10½ years	$202,490,286.25
Average per year	$19,284,789.17

*Six months, July 1 to December 31, 1916.
**Calendar year.

Notwithstanding the said large amounts of net income, which might have been distributed to the stockholders at the discretion of the directors, the average of all dividends paid to stockholders on the very low capitalization mentioned, for the period of July 1, 1901, to June 30, 1920, was only 8.51 per cent on the par of stock and on the property investment during the same time in excess of bonded debt 3.916 per cent.

The physical valuation now being carried on by the Bureau of Valuation of the Interstate Commerce Commission will support a value clearly in excess of the property investment above stated.

A policy clearly recognized in the Transportation Act, 1920 is to bring all the railways eventually to substantially the same principle of capitalization, which is to be as nearly as practicable the value of their respective railway operating properties, so that the cost of transportation as between competitive systems and as related to the value of the properties through which the service is rendered shall be the same so far as practicable, so that the railways can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon
320 the value of their respective railway properties.

Applicant's present interest and sinking fund charges amount approximately to $7,250,000 per annum, and the issue of $80,000,000 bonds as proposed would increase this amount by $4,800,000 per annum. During the five and one-half years from July 1, 1914 to December 31, 1919, the average annual net income yielded by applicant's railways, plus applicant's other income, was $17,324,703.73 in excess of the proposed new interest requirements, which is a large and safe margin above all dividends requirements in respect of the proposed total $170,000,000 of capital stock.

The annual net income available for dividends, as shown by the above statement, and present rate and traffic conditions in applicant's territory prove that by the most conservative estimate the additional securities proposed will not impair applicant's credit or its ability adequately to serve the public as a common carrier.

The unduly low capitalization of applicant as compared with other railroads in the same territory, and as compared with its property investment, has led to a misunderstanding on the part of the public as to the rate of return on fair value of property shown by applicant's earnings. The capitalization per mile in stocks and bonds, as of December 31, 1919, of the principal roads in applicant's territory is as follows:

Chicago, Milwaukee & St. Paul Railway Company	$60,16
Chicago & Northwestern Railway Company	47,919
Union Pacific Railroad Company	87,196
Atchinson, Topeka & Santa Fe Railway Company	55,857
Chicago, Rock Island & Pacific Railway Company	46,232
Missouri Pacific Railway Company	56,046
Northern Pacific Railway Company	65,488
Great Northern Railway Company	52,641
Chicago, Burlington & Quincy Railroad Company	31,164

321 The partial capitalization of applicant's surplus now proposed is just in relation to the capitalization of said other companies with reference to applicant's fair value and is in furtherance of the policy of the Transportation Act.

Wherefore, applicant prays for an order, (*a*) approving its proposed First and Refunding Mortgage to be dated February 1, 1921, to the First National Bank of the City of New York and Walter S. McLucas as trustees, to secure bonded indebtedness as provided therein; (*b*) as a necessary basis for the bonds provided by said mortgage, authorizing the issue by applicant of $60,000,000 additional capital stock and distribution of the same pro rata among its stockholders, thus transferring to capital account $60,000,000 of applicant's surplus; (*c*) authorizing the issue of $109,000,000 in 6% First and Refunding Mortgage Bonds, to reimburse applicant's treasury for moneys heretofore expended out of earnings in additions and betterments to applicant's railway operating property; $80,000,000 of said bonds, or the proceeds thereof, to be held in applicant's treasury free to be used for any lawful purpose, including dividend purposes, the balance of said bonds, $29,000,000 to be disposed of by the applicant only for future additions and betterments to its railway operating property after further application from time to time to this Commission. Chicago, Burlington & Quincy Railroad Company, by Hale Holden, President.

Four blue prints attached to said application, and a part thereof, being as follows:

EXHIBIT TO APPLICATION.

Chicago, Burlington and Quincy Railroad Company.

Classified Statement of Expenditures for Road, Equipment, and Permanent Improvements for the Period July 1, 1901, *to December* 31, 1919.

Consolidation key, I. C. C. classification Nos.			Classification.	Amount.
1901-1907.	1907-1913.	1913-1919.		
			Construction:	
1	1	1	Engineering	$1,650,994.13
2-3	2-3	2-3	Real Estate Right of Way and station grounds	19,250,506.39
4	4	3	Grading	23,257,145.60
5	5	5	Tunnels	757,862.19
6	6	6	Bridges, Trestles & Culverts	18,187,644.48
7-10	7-10	8-10	Ties, Rails and Other Track Materials	25,426,694.50
11	11	11	Ballast	3,600,328.21
12	12	12, 38	Track Laying & Surfacing	6,507,603.70
13	14	13	Right of way fences	510 196.60
14	15	15	Crossings and Signs	2,236,891.68
15	16	27	Interlocker & Signal Material	3,628,208.74
16	17	26	Telegraph & Telephone Lines	936,463.84
17	18	16	Station Buildings & Fixtures	5,108,700.51
18	20	20	Shops and Roundhouses	4,614,521.97
19	21	44	Shop Machinery & Tools	1,475,491.76
20	22	18	Water Stations	2,525,411.94
21	23	19	Fuel Stations	762,983.01
22	24	21	Grain Elevators	481,071.03

23	25	22	Storage warehouses	33,251.57
24	26	23-24	Docks & Wharves	115,993.88
25-26	27-29	4, 29-34, 45-46	Electric Light & Power Plants	452,606.62
28	19, 31	14, 17, 35	Miscellaneous structures	3,015,800.21
32	36	41	Cost of Road Purchased	997,783.13
29	43	73	Legal expenses	18,030.08
30	47	76	Interest & Discount	890,268.50
31	44-46-48	36, 39, 71, 72, 74-5, 17	General Expenses	712,282.10
..	32-35½	40, 43, 47	Miscellaneous Expenses	1,422,406.18
			Total	$128,577,142.55
			Equipment:	
1	37-38	51	Locomotives	$21,203,737.11
2-5	39	54-55	Passenger Cars	3,160,891.87
6	40	53	Freight Cars	32,167,130.83
7	13, 41	37, 57-58	Other cars	3,764,211.61
8	42	56	Floating equipment	3,719.86
9	..	..	Tools and Machinery	40,842.29
10	..	..	Air Brakes on Freight cars	153,100.00
			Total	$60,493,633.57
			Grand Total	$189,070,776.12

Correct:

C. I. STURGIS,
Comptroller.

Comptroller's Office, Chicago, Ill., Oct. 16th, 1920.

F. H. R./M. N.

(Here follow exhibits marked side folio pages 323, 324, and 325.)

326 DEFENDANTS' EXHIBIT 42.

[Received March 3, 1921. Nebraska State Railway Commission.]

Interstate Commerce Commission.

Finance Docket No. 1069.

In the Matter of Application of CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY for Approval of Its Proposed First and Refunding Mortgage and for Authority to Issue $60,000,000, par Value, of Capital Stock and $109,000,000, Principal Amount, of First and Refunding Mortgage Bonds.

Submitted January 4, 1921. Decided February 28, 1921.

Authority granted to issue $60,000,000 par amount of capital stock; and authority to issue $109,000,000 par amount of first and refunding mortgage bonds denied.

O. M. Spencer for applicant.

Charles W. Bunn for Northern Pacific Railway Company, a stockholder.

Ralph Budd and E. C. Lindley for Great Northern Railway Company, a stockholder.

Robert J. Frank, a stockholder, in person.

John E. Benton for National Association of Railway and Utility Commissioners.

Glenn E. Plumb, for organized railway employees.

Morton F. Culver and W. E. Trautmann, Assistant Attorneys General of Illinois, for State of Illinois and Attorney General of Illinois.

W. M. Hammond for State of Illinois and State Public Utilities Commission of Illinois.

Thomas L. Hall and Hugh LaMaster, Assistant Attorney General of Nebraska, for Nebraska State Railway Commission.

Benjamin C. Marsh for Farmers' National Council.

327 *Report of the Commission.*

By the COMMISSION:

The Chicago, Burlington & Quincy Railroad Company, hereinafter termed the applicant, a common carrier by railroad engaged in interstate commerce, seeks approval under section 20*a* of the interstate commerce act of its first and refunding mortgage and authority to issue $60,000,000 par amount of capital stock and $109,000,000 principal amount of first and refunding mortgage bonds. Application was made under oath, signed and filed on behalf of applicant by one of its executive officers, and notice thereof was given to and a copy thereof filed with the governor of each state in

which applicant operates. No objection to the granting of the application was made directly by any state authority other than the Nebraska State Railway Commission. Hearings were had and the Northern Pacific Railway and Great Northern Railway appeared in support of the application.

Applicant owns 8,948 miles, and operates 9,372 miles, of steam railroad extending from Chicago, Ill., southwesterly to St. Louis and Kansas City, Mo., Omaha, Nebr., and Denver, Colo., and northwesterly to St. Paul and Minneapolis, Minn., and Billings, Mont., with a line connecting Billings and Denver, another from Chicago to the Southern Illinois coal fields, and numerous other branches and feeders. It has extensive and valuable terminals in Chicago, St. Louis, Kansas City, Omaha, Denver and St. Paul, expensive bridges over the Mississippi, Missouri and Platte rivers, modern buildings and equipment, and a large and well established interchange of traffic with its connections. It operates in eleven states and serves a prosperous and well developed territory.

328 Applicant is an Illinois corporation and the railroads incorporated in other states which it now operates have been conveyed to it in fee simple. In 1901 the Great Northern Railway and the Northern Pacific Railway jointly acquired control of Applicant's system by the purchase of $108,000,000 or 96.79 per cent of its capital stock giving in payment therefor their joint 4 per cent bonds maturing in 1921 and pledging the stock acquired as collateral security.

Applicant has outstanding $110,839,100 par amount of capital stock and $174,040,800 principal amount of bonds of which $168,050,000 is in the hands of the public. The greater part of its funded debt is issued under three mortgages.

Its Nebraska extension mortgage is a lien upon 269.16 miles of road, and is secured by deposit of $23,494,000 of first mortgage bonds on 1201.84 additional miles of subsidiary companies which have conveyed their roads to applicant. There have been issued thereunder to reimburse the treasury for expenditures for extensions of lines $29,441,000 of 4 per cent bonds maturing in 1927, sold at prices ranging from 84.5 to 95.12, netting applicant $26,843,383.40. Discounts thereon of $2,597,616.60 were charged to construction. Of these bonds $20,024,000 are outstanding, $18,294,000 in the hands of the public and $1,730,000 in applicant's treasury.

Applicant's Illinois division mortgage covers 1646.4 miles of road. There have been issued thereunder $85,000,000 in bonds maturing in 1949, $56,000,000 to be used to retire prior bond issues, the remainder to reimburse the treasury, $15,000,000 being for expenditures for construction and acquisition of roads before July 1, 1899, and $14,000,000 being for additions and betterments subsequent to that date. Some $50,835,000 of these bonds bearing interest

329 at 3.5 per cent were sold at prices ranging from 75 to 103.5 netting applicant $45,992,235. Discounts thereon of $1,088,975 were charged to construction and of $3,753,790 to profit and

loss. Some $34,165,000 of 4 per cent bonds were sold at from 98.5 to 104.5 netting $35,228,505. Discounts thereon of $9,880 were charged to construction and $1,073,385 of premiums were credited to profit and loss. Of the 3.5 per cent bonds $384,000 and of the 4 per cent $189,000 are in applicant's treasury. The balance of both issues are in the hands of the public.

A general mortgage maturing in 1958 covers substantially all of applicant's railway property existing in 1908 being a first lien on more than 5,000 miles of road. It is so limited that not over $300,000,000 can be outstanding thereunder at any one time, and that bonds can not bear over 5 per cent interest. There have been issued thereunder and are outstanding $65,247,000 of 4 per cent bonds which were sold at from 91.5 to 100 netting applicant $62,44-,450. Discounts thereon of $2,602,550 are being *amortized* from income during the life of the bonds. Before the passage of the transportation act, 1920, the Public Utilities Commission of Illinois authorized the issuance of $121,378,000 of general mortgage 4 per cent bonds; of this amount $2,252,000 have been issued, leaving $119,126,000, of which $9,873,000 are in applicant's treasury and $109,253,000 remain unexecuted.

The investment in road and equipment as shown in applicant's accounts is $503,745,837.57. Its outstanding securities amount to $284,879,900, leaving a book surplus of $218,865,937. Ap-
330 plicant contends that it has an actual surplus materially in excess of that figure which does not take into account investments in property other than road and equipment, and does not include any sum in consideration of its guaranty under section 209 of the transportation act, 1920. It asserts that the value of its physical property upon the basis provided in section 19*a* of the interstate commerce act amounts to $572,800,000 or about $70,000,000 more than the total shown as investment in road and equipment. Depreciation on its equipment has been charged to the amount of $48,514,239.62. Applicant states that since July 1, 1901, it has invested out of earnings $189,070,776.12 in additions and betterments to its property only a small portion of which was expended for non-revenue producing assets; that *is* has in addition used earnings to retire bonds expending a total of $191,348,478.49, properly chargeable to capital account, no part of which has been capitalized. During that time applicant has increased its mileage from 7,600 to 8,900 miles. The total mileage owned and operated has increased from 7,700 to 9,300 miles. Second track has been increased from 425 to 1,000 miles and yard track and sidings from 1,700 to 3,200 miles. The tons of traffic handled have increased from 17,000,000 to 49,000,000; the ton miles from 3,800,000,000 to 14,000,000,000; the density ton miles per mile of line from 582,000 to 1,483,000; the trainload from 200.43 to 722.19 tons; the carload from 12.5 to 26.5 tons. Applicant has during this time reduced its funded debt and has securities now in the hands of the public totaling $31,164 per mile of road.

Objectors do not deny the existence of property value used and useful in rendering the public service materially in excess of
331 applicant's present capitalization, and do not question the nature of the expenditures involved. They question the right of a public service corporation to declare dividends from invested surplus acquired from earnings during a period when the stockholders were receiving regularly a fair dividend upon the outstanding capital.

Applicant's net income applicable to dividends for the past 10.5 years has been as follows:

1910	$13,308,746.18
1911	16,843,762.73
1912	14,106,753.78
1913	19,430,745.89
1914	17,114,407.14
1915	17,288,912.63
1916*	43,878,845.26
1917	28,009,001.57
1918	15,947,881.56
1919	16,561,229.51
Total 10.5 years	202,490,286.25
Average per "	$19,284,789.17

Notwithstanding this large net income available for distribution among the stockholders the average of all dividends paid from 1901 to 1920 was 8.51 per cent upon the abnormally low capitalization and 3.916 per cent upon the average property investment in excess of all outstanding bonds.

There is no proof that this income is the result of excessive rates. Traffic has been carried by applicant at rates controlled by state or interstate regulatory bodies, substantially the same as those applicable over competing lines. Nor is there any proof that the total return upon the fair value of applicant's property has been excessive. Applicant's right to capitalize $119,000,000 of the surplus has in fact been recognized by the public utilities commission of Illinois, the state of its incorporation, under express statutory provision. A five year statutory limitation prevented that body from considering surplus accumulated during an earlier period.

332 Applicant points out that its present financial structure is inadequate for present and future needs. Its Nebraska extension and Illinois division mortgages are closed, and its general mortgage so limited that its use is impractical under present conditions. The execution of a new mortgage subject to these existing liens would be futile. Applicant now proposes to close the general mortgage without issuing further bonds under it, and to execute a

*18 months' period due to change in report year.

fifty-year first and refunding mortgage to secure coupon bonds to be issued in series at interest rates, and redeemable at times, and on terms, to be determined by the directors at the date of issuance, subject to our approval.

Under the general mortgage, $175,000,000 of bonds were reserved to refund $168,501,000 of prior lien bonds at premiums not exceeding $6,499,000; and bonds were issuable thereunder as follows: $2,000,000 to finance such refunding, $45,000,000 to reimburse for expenditures before 1908, and the remainder for future additions and betterments. It is stated that only $78,000,000 could be issued for the last mentioned purpose. But there is evidence that only $139,744,000 of such bonds are now reserved for refunding purposes and the amount necessary therefor would seem to be even less, of the original $169,501,000 of prior lien bonds, $46,728,000 have matured and presumably been retired, leaving $121,773,000, of which there is reason to believe $12,268,000 have been retired. If so the only remaining prior liens are the Nebraska extension and Illinois division mortgages, to refund which at maturity, par for par only $102,800,000 would be needed. But the aggregate amount of bonds now
outstanding under those mortgages is $105,024,000. There-
333 fore, if all prior lien bonds have been, or shall be, refunded at par without expense to applicant, $129,729,000 of bonds would be issuable now under the general mortgage which, with the $65,247,000 outstanding and $105,024,000 reserved for refunding, would close said mortgage.

Applicant points out that bonds under its general mortgage could not bear more than 5 per cent interest and if they could be marketed at all would have to be sold at heavy discount, and that they would not be redeemable before 1958. It is shown that the amount of bonds issuable under that mortgage would not meet applicant's needs for additions and betterments at the current rate beyond 1933, and if the proposed dividends were paid would not meet requirements beyond 1929. It is contended that the proposed financial program would better applicant's credit and strengthen its position.

Authority is sought to issue $109,000,000 of first and refunding mortgage bonds at 6 per cent, $29,000,000 thereof to be used for future additions and betterments subject to our approval, $80,000,000 thereof to be held free in applicant's treasury for any lawful use including issuance as dividends. It appears that they would be used solely for dividend purposes and if authorized would be distributed among the stockholders.

Applicant calls attention to the necessity of refunding on July 1, 1921, $215,227,000 of its controlling road's joint 4 per cent bonds given in payment for its stock, and points out that practically all of its proposed bond issue if authorized would be available to those roads for use in meeting that obligation, thus materially reducing their fixed charges. It points out that as the controlling roads are its principal stockholders it is their foregoing of dividends which has
produced its invested surplus. It contends that its own in-
334 crease in fixed charges would be offset by the material advantage resulting to its established connections. It shows that

the proposed financing would slightly reduce its ratio of bonds to stock, placing it substantially upon the basis of 1.5 to 1; and would not so increase fixed charges as to impair applicant's ability to serve the public.

Objectors contend that applicant should not be permitted to increase its fixed charges without a showing of resulting benefit to applicant. The issuance of the proposed bonds at this time would materially increase applicant's interest burden without apparent necessity. The interest rate at the time of the above-mentioned expenditures from surplus was not in excess of 4 per cent. Authorization of bonds at that rate at the present time would seem inexpedient. Division of that part of the surplus not needed for ordinary surplus purposes by means of stock appears more in accord with applicant's and the public's welfare.

Both the wisdom and legality of the joint acquisition and ownership of the Burlington by the Great Northern and the Northern Pacific are questions foreign to this proceeding and therefore require no consideration on this occasion.

While we do not minimize the advantages derived by applicant from its connections with the Northern lines we are not convinced that the continuance of those connections is dependent upon the issuance of the proposed bond dividend. The general advantages of minimizing fixed charges in refunding the joint fours are apparent, but we can not share applicant's apprehensions relative thereto. The northern lines enjoy a position relatively favorable to financing such a refunding. The value back of applicant's stock renders it desirable collateral security. No evidence has been introduced
335 which convinces us that the refunding could not be accomplished at a reasonable rate by the issuance of bonds of the Great Northern and Northern Pacific secured by mortgage and the pledge of applicant's stock.

Confusion has been injected into this case by the failure to distinguish between the issuance of bonds to reimburse the treasury from the proceeds thereof for expenditures for additions and betterments, and the issuance of bonds from invested surplus for dividend purposes. We cannot accept applicant's argument which finds in the Illinois Commission's approval of the issuance of 4 per cent or 5 per cent bonds to reimburse applicant's treasury for expenditures for additions and betterments, a sanction of a dividend of 6 per cent bonds. It is true that body's authorizations contained no express prohibitions against such a dividend, but each of its orders provided that the bonds should be sold and a majority of the orders specified sale for cash; all required that the proceeds be applied to specified purposes. One order made optional the pledge of the bonds. The Illinois statute enumerated the purposes for which a public service company might issue securities without including the issuance of dividends, and expressly stated that securities might be issued for no other purpose. Nor is it certain that the question before the Illinois Commission was wholly analogous to that here presented, for the approval of a bond issue during a normal period differs materially from approval of an issue at an abnormal rate at an abnormal

time when the only material advantage anticipated inures to parties other than the applicant.

336 Applicant seeks authority to issue $60,000,000 additional capital stock as a necessary basis for the proposed mortgage under which the aggregate amount of such bonds can not exceed three times the outstanding capital stock. It is proposed to issue such stock as a dividend.

If applicant's petition is granted in full it is urged that there will remain a corporate surplus of $101,781,197; that this amount would be adequate to meet applicant's emergency needs, support its borrowing power, afford insurance against obsolescence, minimize short term financing, and serve as a general financial balance wheel. Allowance should be made, however, pending the valuation of applicant's system, for shrinkage of book values, so that the adjusted capitalization will not leave applicant with an inadequate actual surplus.

The evidence establishes (1) that the Chicago, Burlington & Quincy Railroad has a great uncapitalized surplus; (2) that the present capitalization is far below the actual investment or any fair value for rate making purposes which we may subsequently fix under the Valuation Act, Section 19*a* of the Interstate Commerce Act; (3) that the increase in capitalization which would follow the grant of this authority would still leave the total capitalization of the Burlington below the actual investment and the probable fair value of the property devoted to the public service; (4) that the remaining uncapitalized surplus would be sufficient to serve the purposes for which a surplus should be accumulated; and (5) that the present financial structure of the Burlington is obsolete and inadequate and that a new form of mortgage and a larger stock base to meet the requirements of statutes governing investments by saving institutions

337 in various states are necessary.

We find that the proposed issue of $60,000,000 capital stock by the Chicago, Burlington & Quincy Railroad Company as a dividend (*a*) is for a lawful object within its corporate purpose, and compatible with the public interest, which is necessary, appropriate for, and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service; and (*b*) is reasonably necessary and appropriate for such purpose; but that applicant has not justified an authorization of the issuance as dividends of mortgage bonds against its surplus and that authority therefor should be denied. If applicant desires, we shall give consideration on the present record to an application to issue bonds for appropriate purposes other than dividends.

The question of a proper return on the fair value of property devoted to the public use is not pertinent. It is not before us. No one questions the right of owners to compensation for sacrifices made in foregoing dividends. The denial in this case extends only to the issuance of a bond dividend by a railroad which has no need for the bonds, and which can advantageously issue all the stock reasonably required for its needs. The more adaptable form of mortgage which

the applicant desires can be provided without the issuance of a bond dividend.

An appropriate order will be entered.

338 Thereupon the defendants rested.

In rebuttal the Chicago, Burlington & Quincy Railroad Company offered and there was received and read in evidence C. B. & Q. Exhibit 31, which is as follows:

C., B. & Q. Exhibit 31.

"I, Pollock Parmele, do state on oath that I secured affidavits from W. C. Hill, county assessor in Perkins County, Nebraska, on November 8, 1922; that he read affidavit after we had talked the matter over carefully; that he signed three copies of said affidavit; and in my opinion he knew fully what he was signing.

Further, that I talked to Madge Disbrow, County Assessor for Furnas County, Nebraska, on November 9, 1922, with reference to making affidavit as to intentional undervaluation of property in Furnas County; that I read affidavit to her and she said it was correct and signed it in my presence, signing three copies."

339 C., B. & Q. Exhibit 32.

Thereupon the plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit 32, being all of page 4 of the report to its stockholders December 31, 1921, same being as follows:

Sixty-eighth Annual Report.

Chicago, January 2, 1922.

To the Stockholders of the Chicago, Burlington & Quincy Railroad Company:

The following is a report of your Board of Directors for the year ended December 31, 1921.

Mileage.

Mileage of Road Operated on December 31, 1921.

State.	Line owned.			Operated under lease or contract.	Total mileage operated.
	Main line.	Branches and spurs.	Total.		
Colorado	214.11	180.25	394.36	34.97	429.33
Illinois	946.06	745.04	1,691.10	113.85	1,804.95
Iowa	371.68	993.44	1,365.12	73.44	1,438.56
Kansas	12.71	246.55	259.26	.91	260.17
Minnesota	23.61	.....	23.61	14.84	38.45
Missouri	593.59	528.68	1,122.27	13.19	1,135.46
Montana	134.38	.....	134.38	49.45	183.83
Nebraska	1,364.44	1,485.09	2,849.53	22.37	2,871.90
South Dakota	48.88	229.74	278.62	.....	278.62
Wisconsin	228.46	.....	228.46	.53	228.99
Wyoming	572.71	121.08	693.79	29.64	723.43
Total	4,510.63	4,529.87	9,040.50	353.19	9,393.69

Line Owned.

State	Miles of road.	Second track.	Third track.	Fourth track.	Yard track and sidings.	Total.
Colorado	394.36	.....	.....	....	144.93	539.29
Illinois	1,691.10	462.76	42.40	5.41	1,105.64	3,307.31
Iowa	1,365.12	243.55	.....	....	353.47	1,962.14
Kansas	259.26	.....	.....	....	25.32	284.58
Minnesota	23.61	.....	2.25	....	39.91	65.77
Missouri	1,122.27	111.61	.....	....	440.87	1,674.75
Montana	134.38	.....	.....	....	37.61	171.99
Nebraska	2,849.53	32.34	.....	....	780.15	3,662.02
South Dakota	278.62	.....	.....	....	65.75	344.37
Wisconsin	228.46	130.52	.....	....	76.31	435.29
Wyoming	693.79	3.66	.....	....	249.87	947.32
Total	9,040.50	984.44	44.65	5.41	3,319.83	13,394.83

The above shows an increase of 3.85 miles in both "Road Owned" and "Line Operated." This increase was caused by changing the classification of the "Gale cut-off," at Galesburg, Illinois, from "Yard Track" to "Main Line."

340 The plaintiff then offered and there was received and read in evidence, without objection, its Exhibit 33, being page 454 of the report of the Nebraska State Railway Commission for 1911, same being as follows:

C., B. & Q. Exhibit 33.

"Department Report Covering the Value of the Physical Elements Lying Within and for the State of Nebraska of the Following Properties:

Chicago and North-Western Railway.
Chicago, Burlington and Quincy Railroad.
Chicago, Great Western Railroad.
Chicago, St. Paul, Minneapolis and Omaha Railway.
Chicago, Milwaukee and St. Paul Railway.
Atchison, Topeka and Sante Fe Railway.
Fremont Stock Yards and Land.
Illinois Central Railroad.
Wabash Railroad.
Nebraska City Union Stock Yards.
Morton-Gregson.
Omaha Bridge and Terminal Railway.
Sioux City Bridge.
Chicago, Rock Island and Pacific Railway.
Missouri Pacific Railway.
St. Joseph and Grand Island Railway.
Union Pacific Railroad.
Union Stock Yards of Omaha.
All Properties in State."

341 The plaintiff then offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit 34, being page 456 of the Fourth Annual Report of the Nebraska State Railway Commission, for 1911, above referred —, which is as follows:

C., B. & Q. Exhibit 34.

"Physical Value for July 1, 1909, of Chicago, Burlington & Quincy Railroad Company's Property.

Miles of Roadway, 2,850.00. Miles of Track, 3,483.38.

	Department valuation.	
	Repro. new.	Present.
1. Right-of-Way and Station Grounds	$13,886,435.21	$13,886,435.21
2. Real Estate	256,882.27	256,882.27
3. Grading	21,154,792.42	21,154,792.42
4. Tunnels	118,639.24	105,188.64

	Department valuation.	
	Repro. new.	Present.
5. Bridges, Trestles and Culverts	7,230,256.05	5,101,827.81
6. Ties	9,356,357.02	5,677,401.57
7. Rails	11,243,440.47	8,080,844.96
8. Frogs and Switches	327,574.44	219,646.34
9. Track Fastenings and Other Material	2,195,173.56	1,522,748.41
10. Ballast	4,281,969.18	3,922,732.15
11. Track Laying and Surfacing	2,596,943.97	2,596,943.97
12. Roadway Tools	112,959.87	68,276.99
13. Fencing Right-of-Way	815,970.97	552,340.26
14. Crossings and Signs	635,056.86	472,765.56
342		
15. Interlocking and Other Signal Apparatus	171,728.00	142,883.00
16. Telegraph and Telephone Lines	724,411.32	544,149.95
17. Station Buildings and Fixtures	2,611,764.00	1,892,929.00
18. General Office Buildings	209,835.00	167,427.00
19. Shops, Engine Houses and Turntables	1,902,446.00	1,357,015.00
20. Shop Machinery and Tools	635,459.23	373,594.22
21. Water Stations	1,073,635.00	797,282.00
22. Fuel Stations	416,048.00	290,291.00
23. Grain Elevators	10,653.00	8,653.00
30. Miscellaneous Structures	952,517.00	658,504.00
31. Adaptation and Solidification of Roadway	3,828,856.00	3,828,856.00
32. Engineering and Superintendence	2,712,705.00	2,712,705.00
33. Steam Locomotives	3,846,837.72	2,571,619.33
35. Passenger Cars	1,896,527.93	1,089,690.18
36. Freight Cars	8,190,240.36	5,550,980.21
37. Work and Floating Equipment	649,337.90	472,059.60
38. Rent and Repairs of Equipment	307,800.00	307,800.00
39. Inspection and Purchase of Equipment	145,829.00	145,829.00
40. Transportation of Material	960,000.00	960,000.00
41. Stores and Supplies for Nebraska	1,563,721.00	1,563,721.00
42. General Expenditures—Contingencies	14,982,373.93	14,982,373.93
Grand Total	$122,005,176.92	$104,037,188.98

343 Present Value is found to be by this report 85.27% of Reproduction Value New.

NOTE.—For estimates covering working sections 21-45-46 claimed and included by the owners of this property, but excluded here, see supplemental report."

Plaintiff then offered and there was received and read in evidence without objection, C. B. & Exhibit 36, being the title page to the 1913 Annual Report of the Nebraska State Railway Commission, and pages 521 to 525 inclusive of that report, and pages 528 and 529 thereof, as follows:

C., B. Q. EXHIBIT 36.

(Title Page.)

"Sixth Annual Report of the Nebraska State Railway Commission to the Governor.

Year Ending November 30, 1913."

(Pages 521 to 525, Inclusive.)

"Physical Valuation Steam Railroad Properties for 1911-12.

Addendum.

To find a present value or condition by applying depreciation to be determined reproduction cost new of all accounts claimed to be subject to such action.

Formula (No. 2).

Items 1 and 2 carry at..... 100%

344 Item 3, unless embracing structural elements subject to deterioration, carry at..... 100%

Items 4 to 10, inclusive, apply approved depreciation.

Item 11 apply the average ratio found for total of accounts 6, 7, 8, 9, 10 and 12.

Items 12 to 30 inclusive apply approved depreciation.

Item 31 carry at..... 100%

Item 32 reduce three-fifths by the same ratio as found for the average accounts 2 to 30, inclusive; and carry remaining two-fifths at 100%

Items 33 to 37 inclusive apply approved depreciation.

Item 38 apply the average ratio found for total of accounts 3 to 30 inclusive.

Item 39 apply the average ratio found for total of accounts 33 to 37 inclusive.

Item 40 apply the average ratio found for total accounts 3 to 30 inclusive.

Item 41 carry at..... 100%

Item 42 four-fifths of the organization, administration and legal carry at..... 100%

One-fifth remaining of organization, administration, and legal expenditures, together with printing, insurance on property, taxes, and interest on money during construction reduce in ratio found for the average of all items 1 to 40 inclusive except 31.

After having found that outlined immediately above, make a summary of the totals of all accounts 1 to 40 inclusive, except 31, and reduce contingencies according to the ratio found between the resultants.

Argument.

Supporting Formula No. 2 from which is derived and presented herewith statements setting out present value of steam railroad properties, and modifying methods of 1909 now of record alto-
345 gether for consideration.

All appraisals suggested for consideration under public regulation must be predicated essentially upon ideal principles. To undertake to set out a modification or make amendments to that which has obtained heretofore at once introduces many questions, some of which it may be advisable to mention here, but the discussion of the same because of desired brevity should be very limited and in some cases entirely omitted because the characteristics are well known. Therefore, only the salient matters concerning some of the prime steps will receive mention.

One of the first duties of a valuator in determining a physical present value or state according to accepted methods is to apply a proper measure of depreciation to the established reproduction cost new. This involves as a general plan the influencing of each item of the inventory credibly and scientifically and sometimes arbitrarily based on judgment, in order to find the desired conclusion. Thus it is agreed manifestly the solution comprehends that which is ideal in accounting, and the hypothetical findings are expected and desired to coincide with the realized depreciation if spread over a considerable period of years and under normal conditions.

A number of steps in accepting principles to be adhered to presents many times not altogether agreed to separation of accounts;
346 but which if taken altogether in the make-up of an extended history of a property should make little difference in the final figures. To illustrate, amortization of certain elements dissipating and re-appearing, versus capitalization; what shall be embraced and understood as maintenance costs, versus depreciation; and straight line depreciation versus that estimated less interest on an assumption of being a fund partly loaned. To assist in disentangling some of the controversies which might appear in these matters, and give a more uniform understanding and practice, certain classifications of accounts have been prescribed and accepted resulting in much progress in standardization, and which has been held in mind in organizing valuations.

In spite of the advances in the methods of appraisals, there remains a considerable of oscillating about pivotacable points, and therefore there is commanded for consideration a review from all claimed

rational angles. Such demands may arise because of peculiarities incident to one estate where issues are raised, that are not to be found in others. It is reasoned that fallacious treatments may thus be discovered, even to the extent of inaccuracies in things that are basic. Valuations are intended to be so found to avoid as near as possible such criticisms, and therefore any modified principles adopted may as in this case show different figures under different plans of present condition, whereas if a question of rate of decadence is asked for, a careful study will reflect no considerable variance. Thus is evolved the suggestion and use of the appraisal made.

347 In establishing a valuation to be employed in the public regulation of utilities, and which is not considered complete unless a reproduction cost new is set up together with a so-called present value or state, which latter is generally understood to represent relatedly the remaining age of the dollar invested, the same is and may be expected to be considered under two distinct phases with certain modifications with the ramified associations of each, and from which pertinent deductions may be drawn.

One premises may be that the reproduction cost new shall represent the proper invested cost upon which to predicate earnings and other pertinent matters. Shall this be accepted, then the conclusions as to present value would serve but two attending purposes, viz. that of setting out the extent of the physical decay for the study of probable serviceable life, and that of comparably measuring a required depreciation reserve fund.

Another basis may be that the present state of the property thus measured in money value remaining, may be made fundamental as the proper amount upon which to base earnings, in lieu of the former, and which obviously would give greater importance to the latter mentioned figures, viz: that of present value. In case such should obtain the related attributes already outlined in the first instance together with additional ones would still remain.

It is expected here not to argue over the various principles adopted into the 1909 appraisal following the above outline, but only

348 set out certain reasons why changes for certain items have been suggested for study. Some of the accounts in the classification cannot rationally be said to be affected by depreciation, while others as treated heretofore as not lessening in wirth when in the present state, have been pointed to for reasons thought worthy of consideration as liable to the action here mentioned. Therefore these only will receive any attention.

11. Track laying and surfacing is an item that may be claimed as related to the material accounts of 6, 7, 8, 9, 10 and 12, and being largely the labor placing and using the said material is given the same ratio as that found for the average of the several elements just mentioned.

32. Engineering and superintendence, which upon close analysis seems to present a dual situation, in that a certain portion of the result of the expenditure becomes emblazoned upon the records and the earth's surface permanently without deterioration or loss, while

the remaining portion may be directly related to the structural elements in association. This account generally approximates a cost of $1,000.00 per mile of roadway. The enduring portion just defined approximates a cost of $400.00 per mile of roadway, or two-fifths of the total, while the remaining three-fifths is depreciated in measure found for the average of all of the structural elements in the roadway, viz: items 3 to 30 inclusive.

349 38. Rent and repairs of equipment during construction can be said to be related to all of the structural items of the roadway, viz: 3 to 30 inclusive, and is lessened in measure as found for the average of the total of the same.

39. Inspection and purchase of equipment may be claimed in coincidence to accounts 33 to 37 inclusive, and is depreciated according to the average of the total of the said items.

40. Transportation of material can be said to be related to all of the structural elements of the roadway, viz: 3 to 30 inclusive, and is lessened according to the average of the same.

42. General expenditures—contingencies. It may be contended that this account is affected by certain lessening of worth related directly or not to certain or all of the other items comprising the inventory. A careful study seems to develop the following, based upon the principles outlined.

Organization, administration and legal expenditures seems to present in certain measure an element not affected by decadence, and may be said to be in part unaffected and enduring and which is the mental concept of the organized estate, somewhat akin to that described for a portion of item 32 above. No other means at hand has been discerned than to arbitrarily fix the amount non-depreciating as four-fifths of the total, at the time considering that the remaining one-

fifth is in character experimental and of a departing nature

350 and in relationship to the physical machine. This remaining one-fifth is lessened by the ratio found for all of the items 1 to 40 inclusive except 31.

Printing, insurance on property, taxes, and interest on money during construction can be claimed as related to the physical machine comprising items 1 to 40 inclusive, except 31, and therefore the present value is measured by the average of the said items.

Contingencies, being an element related to all of the foregoing except item 31, seems to be correctly treated by depreciating in measure found for the average of all of the foregoing except account 31.

To avoid any misunderstanding as to the foregoing, it seems proper to definitely state that intangible values of every kind in accordance with the department's interpretation are entirely excluded from consideration, and especially where bases are mentioned that might seem to involve, and may do so, investment or property beyond the physical, no such elements are reasoned as being embraced in the discussion."

Pages 528 and 529 of the above report of Nebraska State Railway Commission being as follows:

Chicago, Burlington & Quincy Railroad Company's Property.

Miles of Roadway 2,850. Miles of track, 3,528.79.

Subject.	Department's valuation.		
	Reproduction cost new.	Present value.	Present value, new formula.
1. Right-of-Way and Station Ground:			
(*a*) Mkt. Val. with Acquirement	$9,837,330	$9,837,330	.....
(*b*) Inc. Acq. and Severance	16,050,376	16,050,376	.....
2. Real Estate	285,589	285,589	.....
3. Grading	21,366,043	21,366,043	.....
4. Tunnels	118,639	103,639	.....
5. Bridges, Trestles and Culverts	7,574,483	4,997,015	.....
6. Ties	10,592,778	6,254,502	.....
7. Rails	12,170,086	8,952,906	.....
8. Frogs and Switches	368,283	252,608	.....
9. Track Fastenings and Other Mat'l	2,678,305	1,947,975	.....
10. Ballast	4,657,953	4,159,160	.....
11. Track Laying and Surfacing	3,247,233	3,247,233	2,297,093
12. Roadway Tools	128,292	76,975	.....
13. Fencing-Right-of-Way	822,580	558,781	.....
14. Crossings and Signs	684,533	519,124	.....
15. Interlocking and Other Signal Apparatus	242,799	210,230	.....
16. Telegraph and Telephone Lines	967,033	570,335	.....
17. Station Buildings and Fixtures	2,918,994	2,207,699	.....
18. Gen'l Office Buildings and Fixtures	211,185	168,948	.....
19. Shops, Engine Houses and Turn-tables	2,500,904	1,991,711	.....
20. Shop Machinery and Tools	918,610	655,749	.....

21. Water Stations	1,158,490	874,909	.....
22. Fuel Stations	434,357	313,458	.....
23. Grain Elevators	10,653	8,629	.....
30. Miscellaneous Structures	993,800	684,975	.....
31. Adaptation and Solidification	3,808,886	3,808,886	.....
32. Engineering and Superintendence	2,922,683	2,922,683	2,579,677
33. Steam Locomotives	4,833,753	3,168,980	.....
35. Passenger Cars	2,353,394	1,385,613	.....
36. Freight Cars	9,206,643	6,341,293	.....
37. Work and Misc. Equipment	872,109	583,513	.....
38. Rent and Repairs of Equipment	293,037	293,037	235,719
39. Inspection and Purchase of Equipment	172,659	114,794	.....
40. Transportation of Men and Mat'l: (Miscellaneous)	1,208,400	1,208,400	972,037
41. Stores and Supplies for Nebraska	2,470,815	2,470,815	.....
42. General Expenditures—Contingencies:			
(*a*) Mkt. Val. Land only	15,698,996	15,698,996	12,635,459
(*b*) Inc. Acq. and Sev. Rt.-of-Way	16,606,101	16,606,101	13,544,181
Grand Totals:			
(*a*) Mkt. Val. Land only	$128,730,333	$108,242,493	$103,592,129
(*b*) Inc. Acq. and Sev. Rt.-of-Way	135,850,484	115,362,644	110,713,897
(*a*) Per Mile of Roadway	41,169	37,980	36,348
(*b*) Per Mile of Roadway	47,667	40,478	38,847
(*a*) Per Mile of Track	36,480	30,674	29,356
(*b*) Per Track Mile	38,498	32,692	31,374

This statement excludes the property of the so-called abandoned lines.

Chicago, Burlington & Quincy Railroad Company's Property.—Continued.

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Physical Valuation of Steam Railroads.

July 1, 1911.

Chicago, Burlington & Quincy Railroad Company's Property.

Miles of Roadway, 2,850. Miles of Track, 3,528.78.

Supplemental Report Covering So-called Abandoned Lines.

Subject.	Department's valuation.		
	Reproduction cost new.	Present value.	Present value, formula No. 2.
1. Right-of-way and Station Grounds:			
(*a*) Mkt. Val. with Acquirement	$108,315	$108,315	.....
(*b*) Including Acq. and Severence	186,027	186,027	.....
3. Grading	206,729	206,729	.....
5. Bridging	2,079	1,630	.....
32. Engineering and Superintendence	25,802	25,802	25,768
42. General Expenditures—Contingencies:			
(*a*) Mkt. Val. Land only	39,395	39,395	39,344
(*b*) Inc. Acq. and Sev. Right-of-Way	45,213	45,213	45,166

Grand Totals:			
(*a*) Mkt. Val. Land Only	$382,319	$381,871	$381,785
(*b*) Inc. Acc. and Sev. Right-of-way	465,850	465,401	465,330

Total Figures for the Chicago, Burlington & Quincy Rail road Company's Property, Including the Above So-called Abandoned Lines.

Grand Totals:			
(*a*) Mkt. Val. Land Only	$129,112,652	$108,624,364	$103,973,914
(*b*) Inc. Acq. and Sev. Rt. of way	136,316,334	115,828,045	111,179,227

353 C., B. & Q. Exhibit 37.

The plaintiff then offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit 37, being the title page of the Seventh Annual Report of Nebraska State Railway Commission, as follows: "State of Nebraska. Office of the Nebraska State Railway Commission. Lincoln, Nebraska, December 1, 1914. Honorable John H. Morehead, Governor of Nebraska. Sir: In compliance with the requirements of subdivision (*o*), Section 2 of the Railway Commission Act, we have the honor to submit herewith our Seventh Annual Report, covering the year ending November 30, 1914. Very respectfully, Henry T. Clarke, Jr., Chairman, Thomas L. Hall, Commissioner, H. G. Taylor, Commissioner. Attest; A. B. Allen, Secretary."—together with page 634 of the report, which shows the physical valuation of the C. B. & Q. property in Nebraska as of July 1, 1913, excluding the factor of the cost of acquisition and the severance of right-of-way. The- found Reproduction Cost New to be $130,805,001. and Present Value $109,888,797., and according to their new formula $104,994,348., including acquisition cost and severance of right-of-way, Reproduction Cost New $137,972,854, Present Value $117,056,650., Present Value new Formula, $112,163,823.

The plaintiff then offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit 38, being the affidavit of Mr. Byron Clark, one of the attorneys in the case who was ill and in the hospital and could not participate further herein, which affidavit is as follows:

354 C., B. & Q. Exhibit 38.

"I, Byron Clark, do state on oath that I represented the Chicago, Burlington & Quincy Railroad Company in hearing before the Nebraska State Railway Commission in 1911 and 1912 on physical valuation of railroads; that all figures furnished the Commission by the Railroad Company were on the basis of reproduction new valuation in every particular; that the total of $200,624,576.79 reported as contended for by said railroad company, which is shown on page 472 of Fourth Annual Report of the Nebraska State Railway Commission plainly shows same as being "Respondent's Valuation Reproduction New"; that said figure for reproduction cost new was refused by the Nebraska State Railway Commission, and was never considered or used by said commission, the public, or shippers as a proper valuation upon which rates might be predicated or upon which the railroad company should be permitted to earn compensation; that in figuring reproduction cost new on item I, Right of Way and Station Grounds, $25,177,999.71, actual market value of land on July 1, 1909, was increased over 2½ times to arrive at the cost of acquisition and severance of land by railroad company for railroad uses; that under item 42, General Expenditures, $67,670,576.79, was figured Contingencies of $12,873,610.08 which was speculative and only considered in reproduction cost new; taxes of $3,004,517.59 for 4 years during reproduction period; commissions of $4,232,128.64

and organization of $2,124,145.66 in connection with reproduction cost; and interest of 6% for 4 years of $40,628,436.83 on money used during period of reproduction before earnings would commence; that no depreciation of any character was figured on any of the 42 items included in these figures."

At this time, being the hour of 12.30 P. M., a recess was taken until two o'clock P. M. the same day, Tuesday, December 19, 1922, at which time further proceedings were as follows:

Evidence adduced on the part of the Northwestern Lines.

At the hour of 5.30 P. M., the same day, an adjournment was taken until the following day, Wednesday, December 20, 1922, at 9.30 o'clock A. M., at which time the court convened and trial resumed. Present as before. Further proceedings as follows:

Amongst other colloquies is the following, Judge Munger addressing Mr. Root, Solicitor for plaintiff:

COLLOQUY BETWEEN COURT AND COUNSEL.

"Judge Munger: Have you set out in your chart the percentage of true value that the assessment is by each of those four methods? (Referring to Morgan's affidavit.)

Mr. Root: No.

Judge Munger: Your estimates run from ninety five million to one hundred and twenty-two million. I wonder if you set out what percentage of that value the year's total assessment in Nebraska was?

Mr. Root: * * * So again we want our position to be plainly understood that we are standing on the valuation of $108,000,000." * * *

"Mr. Lamaster: * * * I understand the Burlington has sent vouchers to various county treasurers for 60 per cent——

Mr. Root: 65 per cent." * * *

"Mr. Root: Is there any question in the minds of the court that the Burlington has offered to pay whatever the court finds?

Judge Munger: I have the impression that you made a general offer to pay whatever the court finds.

Mr. Root: On page 38 of the bill, after various allegations, it says:

'and plaintiff avers that it is willing to, and will, pay such lawful taxes as are levied upon said last aforesaid sum or value per mile or upon such other sum as this court may determine to represent the fair and equitable taxable value of its property per mile as compared to the tax burdens imposed upon taxable land in said state.'

now if there is any question, while we have offered 65 per cent, of course whatever the court says is the actual amount, if more than that, we cheerfully——

Judge Munger (interrupting): You make a general offer to pay whatever the court finds?

Mr. Root: Yes."

Testimony closed.

357 Whereupon an adjournment was taken until nine-thirty o'clock A. M. the following day, Thursday, December 21, 1922, at which time the motion for a temporary injunction was argued and submitted and taken under advisement by the court.

The following opinions were delivered orally from the bench by the Court, to-wit:

358 In United States District Court.

OPINION, LEWIS, J.

Judge LEWIS announced the decision of the Court, as follows:

We think a brief statement coupled with what has already been said in the railroad tax case will sufficiently express the reasons for our conclusions in those cases.

We gave it as our tentative opinion during the progress of the argument that where the state statutes provide a procedure for the settlement of the complaints of a tax payer on account of his contention that his property has been assessed too high, that that procedure should be exhausted under the authorities before resort to a court of equity is had for the purposes of obtaining the extraordinary writ of injunction. We are disposed now to adhere to that tentative view which we held then. Mr. Judson on Taxation in considering this question, Section 623, says:

"When the question involved is not the validity of the tax in toto, but wholly the amount of the assessment, alleged to be excessive, either on account of overvaluation absolute or relative, or failure to make a required deduction, application must first be made to the revising or equalizing board appointed by the state to hear and act on complaints of excessive or erroneous assessments."

That was done here.

"In the absence of statute, there is no jurisdiction in the courts to review the discretion of such tribunals, that is, a court of
359 equity is not a court of errors to review their decisions. But the procedure established by the State for the correction of assessments, whatever it is, must be followed, if open to the taxpayer, before he will be allowed to enjoin the alleged excessive assessment. If the state practice allows a judicial review of the findings of equalizing boards upon writ of certiorari or other statutory procedure, resort must be had to the remedy thus provided."

The reasons for this rule have been many times stated. They are set out at length by the Supreme Court in Pittsburg Railway against the Board of Public Works. It is impossible for the assessing and valuation officers to know and fix the amount of revenue for all public purposes, schools, county, and state until valuations are determined so that the rate of levy may be fixed, and it is generally recognized as a principle that that should be done as early and as expeditiously

as possible so that public institutions, and the state government itself, will not find itself without funds to administer its public functions. Otherwise, if those questions are open the taxpayers, after the amount of taxes required have been ascertained and valuation fixed and the rate of levy made, cannot go into a Court of equity and enjoin collection of public revenue, and in this case, even to grant what the complaining roads request would leave several hundred thousand dollars of public revenue for the maintenance of schools and
360 county government and state government uncollectible, and force its obligations in the nature of warrants, perhaps to go to discount.

It is for the purpose of avoiding these contingencies and these results which would necessarily follow that the different states have provided for speedy ascertainment and fixing of the valuation and the rate of taxation to be levied. That is thoroughly commented on and set forth in this Pittsburg Railway case. That case arose over the assessment of a bridge. It was a controversy as to whether or not the bridge should have been separately valued and assessed as a structure or building under the statute of the state, or whether, as contended by the railway company, it should have been taken in and counted as part of the railway.

Under the statutes of the state the railroad company was given the right to appeal to the state court, the state trial court. It is true that the statute provided that the parties, the Board of Public Works on the one hand and the railway company on the other hand, could both have been heard fully in that court and could have adduced evidence there. They were given that right but the railway company did not avail itself of that right given by the state statute. It stood by
361 and later went into a court of equity and sought a writ of injunction against the collection of the tax on the bridge assessed as a bridge or separate structure. After a full consideration the Supreme Court concluded:

"The plaintiff, upon its own showing, having made no attempt to avail itself of the adequate remedies provided by the statute of the state for the review of the assessment it complains of, is not entitled to maintain this bill."

A number of authorities are referred to in the case in the 280 Federal, Mo. Pacific Railway Company against Conway and Vilonia Road District, which bear out the principles that we are now considering, and which were enforced in that case, one principle being as we understand it, thoroughly established. The only inquiry left in connection with it is whether or not the state provided a remedy for the determination and settlement of the controversy that is presented in this bill. That is to say, that the railway companies properties were assessed too high in comparison with the valuation of farming lands. The statute was repeatedly read during the argument and commented on. Its language leaves its purpose plain and it cannot be obscure. It provided that if the State Board has acted in these

questions of assessment and equalization, which it has full power to adjust, a writ of error may be sued out to the Supreme Court,
362 evidently for the purpose of correcting errors, if any, made by the Board of Equalization.

Similar statutes in this state dealing with county boards of assessment have been passed on by the Supreme Court of Nebraska, and it is held in the Third Nebraska that the County Board of Equalization when it acts beyond its authority, or unjustly to the tax payer is subject to be reviewed in that respect in the Supreme Court, and in that case, Railway Company vs. Washington County, 3 Neb. the audit of the county board was reversed, set aside and vacated. A case of similar nature is McGee, et al. vs. State Ex Rel. No. Am. Cattle Co. 32 Neb., 149. A case treating with the power of the Supreme Court as to the action of the State Board is found in 81, Neb., 139, State Ex Rel. Union Pacific Railroad Company v. the Board of Equalization. Now, in that case, construing the statute of this state, the Supreme Court held that this writ of error which the tax payer was entitled to sue out might properly embody such proceedings as we have here, but that the tax payer could have gone before that board and requested of it that it rule on specific questions, as was requested by the Union Pacific Railway, that it rule specifically as to the value of the railway property on the basis of stocks and bonds, and that
363 the rule specifically on other questions determining or aiding in the determination of the value of the properties. That request was made before the State Board and the State Board declined specifically to rule on those questions. The railway company then sought a writ of mandamus. The Supreme Court reverting to the statutes of this state and calling attention to the fact that the railway company had the right to sue out a writ of error and have the action of the state board corrected. The court then said that if the railroad company wanted to test whether it was the duty of the Board to rule upon those specific questions presented to it by the railroad company it could have embodied in its bill of exceptions, provided for under the statute, the action of the Commission in refusing specifically to rule upon those different questions, and could thus have brought the action of the Board, in declining to rule upon those questions, before the Supreme Court for consideration, and having had that remedy clearly given it under the statute it could not avail itself of the extraordinary remedy of mandamus.

Now, it seems to us this construction of the state statute, not only this statute that was commented on, but other sections of the Nebraska statute with reference to writs of error, must necessarily be a determination and construction by the Supreme Court of its
364 powers in these tax proceedings to take such action on writ of error to the Board as are necessary to correct the very errors complained of now here in a court of equity. Now that would have been a speedy remedy. The statute says that when such a writ of error is sued out that its consideration shall have precedence in the Supreme Court. That could have been done. We cannot assume that the State Board of Equalization would not have followed the opinion of the Supreme Court if it had found that there was an unequal ad-

justment of taxes on account of farm lands being assessed too low and the railroads too high, as is complained of here. The Supreme Court could not have considered the question that was presented to the Board and embodied in the bills of exceptions without announcing its views on the very questions that are presented to this court.

We must assume that the State Board of Equalization would have abided by the conclusions of the Supreme Court and have corrected the errors now complained of. If that had been done it would have been in time in the interest of the public to finally determine the question of the rate of taxation and adjust the rate in keeping with the change in valuations if the plaintiffs' contention here is
365 correct, and thus avoid the very thing that the authorities say is intended to be avoided by these provisions for the final determination of these questions. Now, of course, if the Supreme Court had refused to order a modification or any change in the action of the Board, the railroad companies, having thus exhausted all remedies under the revenue statutes for the correction of these claimed errors and it could now show here that it has been unjustly treated in bearing this burden of taxation, it would have then been open to it to come into this court or into a state court of equity to obtain, and would have been entitled on such a showing to the remedy which it now seeks. Not having done so we are of the opinion that it is not entitled to now maintain this procedure, and we hold that a temporary writ should be denied.

In United States District Court.

CONCURRING OPINION, MUNGER, DISTRICT JUDGE.

I concur in the denial of the temporary injunction. If in the processes of making an assessment for taxes an appeal is allowed by the state statute either to the Board or to a court which can ascertain and fix the true valuation and assessment, there is such an adequate remedy provided as precludes relief by a suit in the United States Court for an injunction against the enforcement of the assess-
366 ment unless the appeal provided by the state statute has been pursued.

172 U. S., 32.
188 U. S., 681.
258 U. S., 122.
257 U. S., 547.
232 Fed., 579.
233 Fed., 235.
280 Fed., 401.
240 Fed., 202.

If such an appeal to the State Court is required because it may fix an assessment that is valid, then a proceeding in error, that is provided by the state statute is also an adequate remedy where the court in such error proceedings has the power to set aside the order making an erroneous assessment and to direct the assessing board to reach a

different result, because the remedy is as effectual if a valid assessment is made by the assessing board acting under the directions of the court as if the court had made such an assessment upon the appeal. Under the construction that has been placed upon the statutes of Nebraska of the same general character as the portion of 5901 of the compiled statutes of Nebraska, which provides for a proceeding in error to the Supreme Court of Nebraska, the Supreme Court has held that the state courts have the power in error proceedings from the actions of boards exercising powers of this nature to review the actions of such Board and vacate and set aside their
367 action.

3 Neb., 30-44.
32 Neb., 149-154.
81 Neb., 139-143-144.

In United States District Court.

DISSENTING OPINION, WOODROUGH, DISTRICT JUDGE.

I find myself driven, with very great reluctance, to dissent in this case. There are many obvious reasons for my reluctance. I appreciate very deeply the drastic character of the remedy sought to be availed here, and appreciate the heavy burden to the State and the unhappy effects upon the State sovereignty that follows from the issuance of such injunctions as are sought here. But as I understand the law the case made out here on the bill and upon so much of the disclosed facts that are conceded, that is, as to the failure to take any error proceedings to the Supreme Court of the State, as I understand the law a prima facie case is clearly made out under—I wouldn't say under all of the authorities, because these suits have been very numerous many of them reported in the books, and under such circumstances there are always opinion- that seem to be at variance with the others. But I understand the law to be clearly established that where in the levying of a tax, in the making of an assessment and the levying of a tax in the performance of that legislative and administrative function—steps have been taken which result
368 in such a condition as is claimed by the plaintiff here; that is, the plaintiff has been discriminated against, that the constitution and laws of the United States have been violated, and that, as in this particular case it happens, there are diversities of citizenship, where that stage has been reached, there remains nothing but a proceeding in the nature of a suit, a strictly judicial inquiry by a court or a body that acts as a court and that exercises strictly judicial powers. When in other words the controversy has become justiciable and only justiciable and there remain no further administrative functions to be performed; when the assessment is made and the taxes laid and either w-ong or right exists, and there is a dispute about that, and the matter is justiciable and resort must be had to a court; in such a case resort can be had to the courts of the United States, and must be had to the courts of the United States, and that in resorting to the courts of the United States there is no harshness

to the State, and there is no harshness to the individual, there is merely assertion of the supremacy of the Federal law, that citizens and the people be not deprived of their property by discriminatory proceedings nor their rights taken away by unlawful proced-
369 ure. It seems to me that is the situation here; that the various steps—a thousand or two thousand assessors have gone out into the State of Nebraska, into the different counties, each assessor among his neighbors, and he has made his assessment and that has gone then to the County Boards, and they have made their equalization, and that has gone up to the State Centralization body and it has taken its action; parties have been heard, proceedings have been taken, the railroad has appeared and it has made its showing, and the assessment is made, the assessment is certified back; it is attached. If it is wrong, if it deprive these plaintiffs of their property contrary to the constitution and the provisions of the constitution of the United States, it has been done, and the only relief is the relief that can be obtained in the court. Now, whether they choose to go to a state court or a United States Court, depends upon them. The United States laws give the plaintiffs situated as these parties are, the right to go into the United States Court, and that right must never be abated or diminished. It is as necessary and as vital a safeguard to the liberties and rights of people as any that are written into the constitution. No more vital, no more fundamental right exists. And I take that view as to this case even though
370 there exists in the State Court means available for judicial inquiry and there is a justiciable controversy that the state courts could determine just as well and upon the same principles as we could apply. Even then the right of those who assert their claims under the constitution and the laws of the United States and those who present a diversity of citizenship to bring the case to the United States Court remains. So they would have a right to come here even though there may be found, as there is found often in many states, a way to get complete relief in the state courts whether there are such ways is a matter often of intricate and subtle inquiry. Many of the cases cited by counsel here, and by the court, turn upon the particular facts and particular analysis of the remedy that the state did offer and whether those remedies were purely what I may call court remedies presented on court proceedings or by administrative bodies. I have particularly in mind this very last decision of the Supreme Court of the United States, Keokuk & Hamilton Bridge Company against Sahn Jr., et al., 42 Supreme Court Reporter, page 207. There application was made for a writ of injunction to remedy just such a wrong as is claimed to exist here. They allege not invalidity of assessment and tax, but discriminatory over-valuation. The record shows that the plaintiff did not even apply
371 to the Board of Review to correct his assessment. That was the situation in the last decision of the Supreme Court of the United States, and that would certainly have precluded the issuance of a writ of injunction—the other comment of the court is more or less obit*ur*—but the court naturally and properly reviews the fact that in Illinois at that time for the purpose of correcting a dis-

criminatory or unlawful assessment of taxes many resorts were provided. It was provided that a review should be made by the assessors and then the Board of Review was to give a hearing, and then when the tax was finally laid there was not to be an immediate distraint and levy upon the property but means of collection were provided whereby the state or the subdivisions of the state could bring suit in local courts where all questions of validity and invalidity of the tax would be open and that had to be done before there was distraint, before there was actual deprivation of property. There was presented a situation where, as the Supreme Court of the United States says, there was no basis for resort to a suit in equity or to an injunction suit as being necessary to prevent sale for illegal tax creating a cloud on the title or multiplicity of suits of other irreparable injury, no necessity whatever. In this case, in this state, if there were further provision for an appeal then in my judgment
372 the matter would have been more debatable but as I view the Nebraska statute upon which reliance here is based solely for this decision, it consists of just one sentence, just one sentence. The whole remedy that is held to be a sufficient remedy is found in only one sentence of the statute. That sentence is this: "From any final decision of the State Board of Equalization and Assessment, any person, county or municipality affected, thereby may prosecute a writ of error to the Supreme Court and upon demand therefor the State Board shall prepare a certified transcript of its record and proceedings involved in such decision upon payment of the fees."

Now, how that error proceedings is to be gone ahead with, what it shall present to the court, what the steps shall be, how through the means of it the remedy shall be availed, is left entirely to conjecture. There has been no resort to the statute in any case, any reported case, of the Supreme Court of the state, and there remains just that vague assertion that a petition in error may be filed. Now, to my mind, to say that that affords any kind of remedy for this sort of situation is to disregard the practical working of those boards and of the taxing systems as we all know it to be. I waive the known generally understood short-comings of a writ of error as a
373 means of remedying any wrong. It is a writ of most limited application. Suits at law are brought in this court; there is a diversity of citizenship; they are tried before juries; juries are carried away by their sympathies and render big verdicts. The litigants then go to the court of appeals and there the learned judges go over all the authorities and elaborate and demonstrate that this court and this jury were wrong and were carried away from the law by their sympathies, and yet on the handing down of their mandate, going to the full extent of their powers under this writ of error, plaintiff dismisses this case and starts over again in the State Court where all of these considerations have no weight, and a judgment is rendered finally against the successful party in this court. That is the obvious limitation of a writ of error, even in its broadest application. It has been practically abolished in the State of Nebraska. Practically all reviews are by some sort of proceeding that

will admit of and offer opportunity at any rate to get more relief than could be obtained under this old almost obsolete writ of error now, even as applied to the general procedure of the courts. But consider the writ of error as applied to this situation here, a means of rectifying and remedying such a wrong by the subordi-
374 nate body as is here involved. To me it seems utterly contrary to all my experience and observation that any lawyer in the State would think for a moment of resorting to such a writ to remedy such a situation. I think the cases read here are illustrative of what you can do with a writ of error in this State. I remember when we used to have cases before a justice of the peace of forcible entry and detainer. The practice involved certain detailed steps whic- had to be taken by the magistrate before he could eject a tenant on forcible entry. In many cases there would be error in those steps. The magistrate's record would reflect that his judgment was without jurisdiction. Now, in that kind of a case you could take a writ of error to the District Court and obtain relief by the wiping out of the judgment in the court below. Though even there the legislature had to supplement the court's power in order to get any substantial justice out of the proceeding. In the case in the early Nebraska reports wherein the Board of Equalization, without any notice, though the statute was specific as to notice, proceeded to raise the assessment of the railway company twelve thousand dollars—now, its record and proceedings would disclose that situation, would disclose that notice had been given and what steps had been taken to remedy that. Resort could be had to the writ
375 of error, and by the writ of error you could present to the District Court the fact that here was a heavy assessment of taxes laid without any notice at all, and contrary to the provisions of the statute, and an invalid act of the board. To such an extent the writ of error could be used. But consider the situation as to the writ of error here. This Board comprises, in this State, officers of manifold duties. How do they actually proceed? All of us have been before a Board of Equalization at one time or another. Now, as a practical proposition, what do you do before the Board of Equalization? You go in before the Board and present your claim that your taxes are assessed too high, and show that the neighboring property is assessed lower. The Board makes no record of citations you give them of the evidence, so-called, that you offer. They consider it in the light of the work they are doing. Then they turn to the assessor whose whole life work is to familiarize himself with those things. They say the assessment should be lowered or raised as their judgment at the time indicates. That is the practical working out that is going on in thousands of instances every year in this State. That is the practical way in which taxes are assessed and laid—has to be. There isn't any other method. Now, just
376 fancy any other method concerning the thousands of complaints that are made, fully thousands in Douglas County. I have been before the Board and I know that is the situation. They assign for different days; a hundred fifty complaints to hear

today, a hundred and fifty tomorrow, and so on. Fancy the situation of that Board attempting to proceed judicially, in a strict sense, as in a court, as to those complaints. A tax never could be laid. It is the same before the State Board of Equalization in practical effect. Here is the main officer of that Board, and year in and year out, and all the year through he is endeavoring to acquaint himself intimately, not only with the actual values but with the reasons for them and the statistics and the various scientific work that is going on in the nature of valuation. He has some of it in his head, a whole lot of it in his book, and the other officers gather there at the Board meeting too. A railroad comes in and says: "Our assessment is high," or it is discriminated against in comparison with others. Now, how impossible it is to hold that Board to be a court, and to proceed like a court, and to make such a record that their errors could be made to appear to a Supreme Court upon a transcript of their proceedings. I understand some Boards have at-
377 tempted to go through this form of inquiry as to some of these large corporations, like the railway systems, and noticeably before the Board in Iowa, there appears the great mass of stuff that was laid before the Board. If so, it is only figuratively laid before the Board. The proceedings would only be a matter of form. Their real judgment is formed as the law intended it should be formed by these officers using their judgment going out and looking at the property, getting all the information they can from here and there and everywhere, and that they should make such a record as a justice of the peace has to make in a forcible entry case so that his lack of power can appear in a writ of error proceedings seems to me to be utterly regardless of the practical situation. But supposing, even conceding, that there is nothing to that line of thought, what had actually occurred here before this Board that could be reviewed by a writ of error? What did actually occur that the Supreme Court could take as a basis to afford any relief to these railroad companies?

Why, what actually occurred was that the attorneys for the railroad company appeared as representing all the railroads in some aspect of the matter and offered some iolated documents before the Board and asked that the record show that they were offered
378 to the Board, here and there some few isolated excerpts of the great mass of accumulated documents that relate to and tend to disclose the value of railroad property, the whole record covering only a matter of a few pages, and thereupon, especially in 1921, the chairman of the Board said, "well, is that all?" "That is all." "All right, we will certify that is all you did here today was to present these documents, the assesment stands as we have heretofore indicated."

Now, I don't see how any possible review of the claims and matters set forth here could be made by the Supreme Court on that kind of a record. Certainly there is no intimation that the Supreme Court would have any right to go outside on its writ of error and get extraneous testimony. A court of general jurisdiction could not do so let alone the merely appellate tribunal. The proceedings in my

mind would be a mere farce, a mere waste of time, couldn't get anywhere, couldn't result in any remedy, couldn't result in any avoidance of this alleged discrimination. To my mind, it is perfectly clear, not only in the first place that the justiciable stage of this dispute has been reached when this bill was brought, not only that the statute did not afford any means within the State to rectify the alleged wrong, but that the reference to the writ of error pro-
379 vided in that one sentence of the statute is of no force or weight at all. No reasonable guess could be made how it could lead to any just settlement of the dispute.

The conclusions reached by my senior associates, and a majority of this court will be by myself considered binding in the litigation that is pending before me.

There have been submitted to me on final proof the petitions of the Northwestern and the Chicago, St. Paul, Minneapolis and Omaha Companies, and all the evidence has been submitted, wherein they ask for an injunction such as prayed here. Now, if this decision had gone off in the merits it would have of course had nothing more than a helpful and guiding effect upon my labors in the Northwestern and the M. & O. cases already submitted. But there is presented there exactly the same question of jurisdiction that is presented here, and, as I find the judges here are of the opinion, and find in this case, that we have no jurisdiction to proceed, I will proceed no further in the Northwestern case, but will hold the matter in statu quo under advisement, providing there is a review taken of the judgment to the court here and that it will be indicated to me that there will be a review. If there is of course, I will know of it be-
380 cause the proceedings for review come largely before me anyhow.

I would comment further though, inasmuch as we have gone this far into it; that if the question had come before this Court of the issuing of an injunction on the merits, and this preliminary question had been decided the other way, I should have entertained very grave doubts, in fact would find myself totally unprepared to say that a temporary injunction should issue. I have pursued the inquiry into the facts only part way. There are of course many documents and many sources of information about values to be gone over. I do not want to be understood as saying, intimating or implying that I have reached any satisfactory conclusion at all on the question of whether, assuming jurisdiction, on the merits of a preliminary injunction and interlocutory order was justified.

381 COLLOQUY BETWEEN COURT AND COUNSEL.

Mr. Root: If the Court please: Speaking of the Burlington I ask that the effective date of this order be postponed forty days, and the reason is this: On the fourth day of January, 1923, a very considerable number of the county treasurers will go out of office, and I think that under the rulings in the Federal courts the case might become moot as to them. I ask that the effective date of the order be postponed so that we may apply to His Honor, Judge Munger,

for permission, on the fifth day of January, 1923, the earliest date that we can do so, to file a supplemental petition to bring into the case those treasurers who come into office for the first time. Now, as to those who may have been re-elected, if any were so fortunate, of course they continue here. Then, in the meantime, my people will determine whether they want to proceed further with this case. I have no authority to say that they want to ask for a—that they intend to appeal. That depends upon my superiors. But if the order denying the application for an interlocutory order be made effective now the difficulties of securing any review of your Honors' decision will be practically insurmountable, at least extremely difficult. We have no desire to unduly hold back any taxes that are due the people of this State, and of any amount that should eventually be
382 deducted we will have to pay our proportion of them in the coming years. So I think it is within your Honors' discretion that that order might be made, and I am asking now, as a matter of grace that this be done, and I submit it to your Honors' discretion.

Judge Woodrough: That is that you have forty days in which to file a new bill?

Mr. Root: No, that the effective date of this order be forty days hence. The case then remains without any injunction, and a case pending. I will apply then to the Lincoln Division for permission to file a supplemental petition bringing in the new treasurers. Then I assume that under the arrangements of comity which exists between the states and ourselves, that they can be placed in such situation that they will be availed of this order, and that we may then, if we see fit, ask for an appeal from this order.

Mr. Lamaster: I would say that the practice has been, as I understand it, that when an officer goes out of office and a new officer comes in, that the new officer is just substituted for the retiring officer. We have done that in numerous cases by agreement; there never has been any question about it, and we are perfectly willing to agree to that procedure.

383 Mr. Root: There has been a quite recent decision by the chief justice on that point.

Judge Lewis: Counsel want the effectiveness of the order to run against the parties when they come in on the fifth of January so that there can be no question about whom it runs against. Those against whom it now runs, if it is now entered will be out of office. That order is negative in character.

Mr. Root: There is a quite recent decision by Chief Justice Taft that where an officer is not one of a continuing body that under the Federal statutes the case becomes moot as to them.

Judge Lewis: You say January fifth?

Mr. Root: January fifth is the incoming date. It is the first Thursday after the first Tuesday. It will take a little time to get those men all in there.

Judge Lewis: What date do you want it?

Mr. Root: Well, I was asking that it be effective forty days from today, if that comes on a week day.

Judge Lewis: Well, that is hardly an appropriate date. Judge Munger suggests that the most appropriate way would be not to enter the order, and not let it bear date until the date you want.

Mr. Root: We will move with all the expedition possible.

384 Judge Lewis: Then you suggest the date and let the order bear that date.

Mr. Root: I have suggested forty days, but if that is too remote let it be sooner. If some of the treasurers feel that they don't want to consent to that——

Judge Munger: I will be out of the State at that time. I would suggest that you ought to get around not later than the tenth of January.

Mr. Root: But I make the application today to file that supplemental petition on the fifth of January.

Judge Munger: Isn't this what you really desire: That we take it under submission, and when the order is made denying the injunction that it be made at the time when the treasurers are then in office. If they come in on the fifth of January, can't you file your petition and have some appearance ready for them by the tenth?

Mr. Root: I surely will have my petition ready.

Judge Munger: Mr. Lamaster, can you have your appearances ready?

Mr. Lamaster: We are authorized to enter appearance for all treasurers except the treasurer of Sarpy County, and if there

385 is a new treasurer there perhaps we may be authorized to enter appearances for Sarpy County.

Mr. Root: Can't Your Honors say that you will hold the order until the fifteenth of January?

(To which query there was no response.)

Judge Lewis: Prepare the form of order you want and submit it to Mr. Lamaster.

Finis.

386 In United States District Court.

STIPULATION SETTLING STATEMENT OF EVIDENCE.

It is stipulated this 1st day of February, 1923, by and between the parties hereto, by their respective solicitors, that the above and foregoing condensed statement of the evidence and the statement of the oral opinions delivered by the three Judges with respect to their decision overruling the application of Chicago, Burlington & Quincy Railroad Company for a temporary injunction and the statement of the proceedings during said hearing is accurate and complete, and that the same shall be approved and settled by the Court without notice to appellees defendants herein, or their counsel, and shall be filed in the office of the Clerk of this Court and become a part of the record herein. Byron Clark, Jesse L. Root, J. W. Weingarten, Solicitors for Plaintiff. O. S. Spillman, Attorney General of Nebraska;

Hugh Lamaster, Asst. Attorney General of Nebraska, Solicitors for All and Singular the Defendants.

387 In the District Court of the United States for the District of Nebraska, Lincoln Division.

[Title omitted.]

ORDER SETTLING STATEMENT OF EVIDENCE.

We, Robert E. Lewis, Circuit Judge for the Eighth Judicial Circuit of the United States Court, and Joseph W. Woodrough, Judge of the United States District Court for the District of Nebraska, do hereby certify that on this 5th day of February, 1923, counsel for the appellant, Chicago, Burlington & Quincy Railroad Company, presented to us, for settlement and allowance, a condensed statement of the evidence adduced and the proceedings had during the submission of appellant's application for a temporary injunction against all and singular the defendants herein, accompanied by proof of service thereof upon counsel for defendants; and we do hereby certify that the above entitled case, upon the application of appellant for an interlocutory injunction, was heard before us, sitting with Honorable Thomas C. Munger, Judge of the United States District Court
389 for the District of Nebraska, in said Court, and that the foregoing condensed statement contains all of the evidence material to a determination of the questions involved in the appeal taken by the appellant, Chicago, Burlington & Quincy Railroad Company, from the order and decree of this Court in favor of the defendants, entered on the 10th day of January, 1923, denying and overruling the application of appellant for an interlocutory injunction against all and singular the defendants County Treasurers in the State of Nebraska, and their successors in office, pending the trial of this case on its merits, from collecting taxes against appellant for 1922 taxation upon a valuation greater than that to be fixed by the court in accordance with the prayer of the petition, from issuing distress warrants, commencing suits or imposing penalties for any excess of the taxes thus laid greater than that fixed by the Court, or from collecting interest or costs thereon save and except for city and village taxes. That the Honorable Thomas C. Munger, Judge of the United States District Court for the District of Nebraska, is not now within the United States; that the foregoing condensed statement of the evidence and of the proceedings is a true, complete and properly prepared statement of all of the evidence in said case material to said appeal, and is hereby approved and allowed as such, and it is hereby——

389 Ordered, that said statement shall be forthwith filed in the office of the Clerk of this Court and become a part of the record in this case.

Done at Lincoln, Nebraska, this 5th day of February, 1923. By the Court. Robert E. Lewis, Circuit Judge. J. W. Woodrough, District Judge. Attest: R. C. Hoyt, Clerk, By J. H. McClay, Deputy.

[Seal of the United States District Court, District of Nebraska, Lincoln Division.]

390 UNITED STATES OF AMERICA,
District of Nebraska,
Lincoln Division, ss:

In United States District Court.

CLERK'S CERTIFICATE.

I, R. C. Hoyt, Clerk of the District Court of the United States, in and for the District of Nebraska here testify that in obedience to an order of said court and in compliance with an agreed præcipe, the foregoing transcript of the record has been made: that the same is a full, true and faithful transcription of the pleadings, orders and procedings of record and file in said Court appertaining to the case wherein the Chicago, Burlington & Quincy Railroad is Appellant, and W. H. Osborne, Jr., as Tax Commissioner of the State of Nebraska, and others are appellees in so far as the record has been requested by the parties as specifically set out in an agreed præcipe therefor; that a duly authenticated copy of the citation issued by the Court on the 16th day of January, 1923, together with all the endorsements thereon, has been made, filed, lodged and remains with the files of the court appertaining to said case, and that the original is transmitted herewith and made a part of said transcript, and may be found at page 116 thereof; that said transcript consists of 390 type written pages numbered consecutively, beginning with No. 1, and ending with No. 390, including index, title pages and Clerk's Certificate.

In witness whereof, I have hereunto set my hand as Clerk aforesaid, and caused an impression of the Seal of said Court to be hereunto affixed at the City of Lincoln within said District and Division this 8th day of February, A. D. One Thousand Nine Hundred Twenty-Three. R. C. Hoyt, Clerk as Aforesaid, By J. H. McClay, Deputy. [Seal of the United States District Court, District of Nebraska, Lincoln Division.]

Endorsed on cover: File No. 29,402. Nebraska D. C. U. S. Term No. 852. Chicago, Burlington & Quincy Railroad Company, appellant, vs. W. H. Osborne, as tax commissioner of the State of Nebraska; Gilbert E. Haase, as county treasurer, Buffalo County, Nebraska; Fred E. Ericson, as county treasurer, Burt County, Nebraska, et al. Filed February 14th, 1923. File No. 29,402.

FILED
MAR 24 1924
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1923.

No. 219

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,

Appellant,

vs.

W. H. OSBORNE, JR., as Tax Commissioner of the State of Nebraska, GILBERT E. HAASE, as County Treasurer, Buffalo County, Nebraska, *et al.*,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

BRIEF FOR APPELLANT.

TIMOTHY BYRON CLARK,
JESSE L. ROOT,
J. W. WEINGARTEN,
J. C. JAMES,
Counsel for Appellant.

BRUCE SCOTT,
Of Counsel.

GUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1923.

No. 219

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,

Appellant,

vs.

W. H. OSBORNE, JR., as Tax Commissioner of the State of Nebraska, GILBERT E. HAASE, as County Treasurer, Buffalo County, Nebraska, *et al.*,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

BRIEF FOR APPELLANT.

Statement of the Case.

This is a direct appeal, under Sec. 266, Judicial Code, from an order of Judges Lewis, Munger and Woodrough, sitting in the District Court, District of Nebraska, denying appellant's application for an interlocutory injunction to restrain the collection of taxes because of discriminatory assessment.

Without passing upon any other features of the application, the three-judge court—Judge Woodrough dis-

senting—denied appellant's application for an interlocutory injunction, on the ground:

> "That plaintiff for the redress of the wrongs recited in its petition had an adequate remedy at law under the statutes of the State of Nebraska in prosecuting error proceedings to the Supreme Court of the State of Nebraska, and for that reason there is no equity in the application for a temporary injunction." (Tr., 47.)

THE ISSUE ON THIS APPEAL.

The question on this appeal is whether or not the provision of the Nebraska statute for error proceedings to the State Supreme Court from the State Board of Equalization and Assessment, deprives the federal court of its equity jurisdiction to grant appellant the injunctive relief to which it otherwise plainly was entitled.

JURISDICTION OF THE FEDERAL COURT.

Appellant's petition and the evidence presented in support of the application for an interlocutory injunction show the following necessary elements of jurisdiction of the federal court:

Diversity of citizenship. Appellant is an Illinois corporation and appellees are the state Tax Commissioner and seventy-two County Treasurers, citizens of Nebraska. (Tr., 4-9.)

Requisite amount in controversy. The excessive taxes from which relief was sought amounted to over $900,000. (Tr., 20-22.)

Denial of federal rights. Appellant's property was deliberately overassessed, for state, county, town, school and road taxes, for the year 1922, at 137 per cent of actual value, while all other property in the state was intentionally and systematically underassessed at but 65 per cent of actual value. (Tr., 29.)

Actual Values.

Actual value of appellant's railroad property in the state (Tr., 29)	$ 100,000,000
Actual value of all other property in the state (Tr., 28)	4,345,000,000
Total actual value	$4,445,000,000

Discriminatory Valuations.

Assessed valuation of appellant's railroad property in the state (Tr., 18)	$ 137,000,000
Assessed valuation of all other property in the state (intentional and systematic undervaluation) (Tr., 28)	2,824,000,000
Total assessed valuation	$2,961,000,000

The discriminatory assessment increased appellant's taxes from about $900,000 to over $1,800,000. (Tr., 20-22.)

Appellant was vigilant in endeavoring to prevent the discrimination against it and protested to the State Board (Tr., 18), but without avail (Tr., 19). The action of the State Board was final (Tr., 19) and appellant was thereby deprived of the equal protection of the laws, in violation of the Fourteenth Amendment (Tr., 32-33).

Denial of appellant's rights under the constitution and laws of Nebraska. The petition alleges that the Enabling Act, pursuant to which the State of Nebraska was organized, required that lands belonging to citizens of the United States residing without the State of Nebraska never be taxed higher than lands belonging to residents of the state (13 Stat. at Large, p. 44; Tr., 10); the Nebraska constitution confirms the provisions of the Enabling Act (Neb. Const. of 1866, Art. XI; Tr., 10), requires that taxes be levied by valuation uniformly and proportionately upon all property (Neb. Const. of 1875, as Amended in 1920, Art. VIII, Sec. 1; Tr., 11) and

that no person or corporation be relieved from its proportionate share of taxes (Neb. Const. of 1875, as Amended in 1920, Art. VIII, Sec. 4; Tr., 11); the Nebraska statutes require all property to be valued and assessed for taxation at its actual value. (Comp. Stats. Neb. 1922, Sec. 5820; Tr., 12; Appendix this brief, p. 68.

EQUITY JURISDICTION OF THE FEDERAL COURT.

Appellant's petition and evidence showed the following grounds of equity jurisdiction of the federal court:

Prevention of cloud on title. Under the Nebraska statutes the taxes assessed on appellant's property became first liens on personal property November 1, 1922, and on real estate December 1st (Neb. Comp. Stats. 1922, Secs. 5822, 5823 and 5825; Tr., 12, 19 and 42; Appendix, p. 68.)

Prevention of multiplicity of suits. By statute in Nebraska it is the duty of the county treasurers to collect taxes by summary distress warrants and seizure and sale of property (Neb. Comp. Stats. 1922, Secs. 5984, 6011, 6015; Tr., 17; Appendix, p. 78); also, in the case of corporations, to demand of any officer or agent in the county all moneys in his hands with criminal penalties on the agent for failure to comply (Neb. Comp. Stats. 1922, Sec. 6017; Tr., 41; Appendix, p. 79). Appellant operates and is taxed in seventy-two counties in the state and the seizure of its money and other property and arrest of its agents in each county, would result in multitudinous suits. (Tr., 32.)

Prevention of irreparable injury. There is no statutory authority in Nebraska for the payment of less than the full amount of taxes, unless some part of the tax shall be levied for an unlawful purpose; there is no statute authorizing appellant to pay any part of its

taxes under protest so that same may be recoverable by legal proceedings or otherwise. (Tr., 42.) The valuation and assessment made by the State Board, certified to the respective county clerks, forms the basis for tax levies in each county; such taxes become a lien on property November first, and county treasurers are required by law to collect the full amount and would force appellant to pay same. (Tr., 19 and 42.) The large amount of taxes levied upon appellant's property as the result of such discriminatory assessment would be wholly lost to appellant and the seizure of appellant's property and the funds in the hands of its agents in the seventy-two counties through which it operates, would interrupt and cripple the conduct of its business as a common carrier engaged in interstate commerce. (Tr., 32.)

No adequate remedy at law. The petition alleged that for the preventive relief demanded by the case made, there exists no adequate remedy at law. (Tr., 31, 34.)

RELIEF PRAYED.

The petition prayed that the court declare invalid the discriminatory valuation and assessment of appellant's railroad property, fix the amount of taxes appellant should pay for the year 1922 on a fair valuation of appellant's property and in proportion to the valuation of all other property, which appellant tendered and offered to pay (Tr., 32 and 42), and for interlocutory and permanent injunctions, enjoining the defendants from collecting taxes on appellant's railroad property in excess of the amount so fixed by the court. (Trans., 33-4 and 44-5.)

INJUNCTION PENDING APPEAL.

After denying the application for an interlocutory injunction, the three judges entered an order restraining defendants from collecting more than 75 per cent of the taxes in question pending this appeal, upon appellant paying such per cent and giving bond in the sum of $450,000. (Tr., 54-6.)

ASSESSMENT AND COLLECTION OF TAXES IN NEBRASKA

The taxes involved are those assessed for *state, county, town, school and road purposes* for the year 1922. For such taxes all appellant's property in the State used in operating[1] purposes is assessed as a unit by the State Board of Equalization and Assessment, meeting in *May,* as a Board of *Assessment.* (Secs. 5839-40, Appendix, pp. 68-9.)[2]

The order of the State Board, assessing appellant's property was entered June 15, 1922 (Tr., 17, 123), fixing the "total actual valuation" of 2,861.60 miles of railroad at $137,589,782. Appellant contends that this assessment was $37,000,000 in excess of the actual value. (Tr., 29.)

Immediately after such valuation and assessment the State Board is required to, and did, make return there-

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[1]Machine repair shops, office buildings, storehouses and property outside of right of way and depot grounds are assessed and taxed in the county where located (Sec. 5839, Appendix, p. 68) and are not involved in this case. Also, there is a special statute (Art. VI, Chap. 61, Secs. 5859-5883, Neb. Comp. Stat., 1922) which provides a separate assessment of railroad terminal property for purposes of city and village taxation. Such taxes are not involved in this case. The provisions for notice, objections, hearing, equalization with other local property, appeal and re-assessment in Art. VI apply solely to the assessment of such local property for *city and village taxation.* Sec. 5883 (Appendix, p. 73) provides nothing in Art. VI shall apply to, or in any manner affect, the assessment, equalization, levy or collection of *state, county, township, school or road taxes.*

[2]Sections of Nebraska Compiled Statutes, 1922. Each section cited is printed at length in an Appendix to this brief, with references to pages of the Appendix.

of to the county clerks of each county in which any portion of such railroad is located (Sec. 5847, Appendix, p. 72), showing the number of miles of railroad track located in each governmental subdivision of each county, the total length of such road in each county and the average valuation per mile of road. (Sec. 5848; Appendix, p. 72.)

Pursuant to Sections 5849-50 (Appendix, p. 72), the county clerks apportion such railroad assessment among the respective governmental subdivisions, same are entered on the tax lists, and state, county, town school and road taxes are subsequently assessed thereon, as hereinafter explained.

Real and personal property of others than railroads is assessed by the local assessors and equalized by the County Boards of Equalization. (Sec. 5971; Appendix, p. 73.) The County Board is authorized to deal with real and personal property, "*except property assessed or valued by the State Board of Equalization and Assessment,*" thus specifically excluding railroad property. (Sec. 5971; Appendix, p. 73.)

Appellant's petition in this case alleges (Tr., 24-27), and a large amount of evidence was introduced in the lower court (Tr., 107-115) showing beyond question, that the local assessing officers and County Boards throughout the state, by and with the consent of the State Board, had agreed upon systematic under-valuation of all other than railroad property, which plan was deliberately carried out with the result that all other property was assessed for taxation at but 68 per cent of its actual value. (Tr., 85-98.) The evidence introduced by appellees in the court below shows that real estate of others than railroads was assessed at from 61 to 75 per cent of actual value. (Tr., 148-9.)

Sec. 5977 (Appendix, p. 75) provides that immediately after the County Board of Equalization has completed its labors the county assessor shall prepare an *abstract* of the assessment rolls of the county and the values as equalized and corrected by the County Board, and forward same to the State Board.

SEC. 5901 provides: "The State Board of Equalization and Assessment shall, on the first Monday of July of each year, meet at the state capitol for the purpose of equalizing assessments. They shall proceed to examine the abstracts of property assessed for taxation in the several counties of the state, including railroads entirely within such county, and all other property, and shall equalize such assessments so as to make the same conform to law, and for that purpose they shall have the power to increase or decrease the assessed valuation of any county or tax district, and such increase or decrease shall be made by a per centum, and the per cent of increase or decrease when made shall be certified to the county clerk of the proper county, who shall thereupon add to or deduct from the assessment of each piece or parcel of property in the county affected an amount equal to the per cent of increase or decrease fixed by the state board. The state board shall have the power in equalizing assessments, to increase or decrease the assessed valuation of any class, classes or kinds of property in any county or tax district, whenever in their judgment it shall be necessary to make such assessment conform to law; and such increase or decrease, when made, shall be certified to the county clerk and by the county clerk extended upon the tax rolls as hereinbefore provided; but in the extension of valuations the county clerk shall reject all such amounts as may fall below two dollars and fifty cents and all amounts of two dollars and fifty cents or more shall be extended as the next higher five dollars or multiple thereof, this making all valuations end in cipher or five. In the event it shall appear to the state board of equalization and assessment that a just, equitable and legal assessment of the property in the state cannot be made without increasing or

decreasing the valuation as returned by any county, the board of equalization and assessment shall issue a notice to the counties which the board deems either under-valued or over-valued and shall set a date for hearing at least five days following the mailing of such notice. At such hearing legal representatives of the counties may appear and show cause why the valuation or valuations of their county should not be increased or decreased by the State Board, and after a full hearing, the state board shall enter its order and certify the same to the county clerks of the proper counties as hereinbefore set forth in this section. The notice provided for in this section shall be mailed to the county clerk, county assessor, and chairman of the County Board. From any final decision of the state board of equalization and assessment, any person, county or municipality affected thereby may prosecute a writ of error to the supreme court and upon demand therefor the state board shall prepare and certify a transcript of its records and proceedings involved in such decision, upon payment by the party demanding the same of a fee of ten cents for each one hundred words. Notice of intention to obtain review shall be filed within ten days from the date of entry by the board, and when docketed said cause shall be given precedence by the supreme court over all civil cases." (Neb. Laws, 1921, Chapter 133, pp. 545, *et seq.*)

July 3, 1922, appellant filed with the State Board a complaint asking that the board reduce the assessment of appellant's property or increase the assessment of all other property in the state, to avoid discrimination. (Tr., 104-6.) But the board on August 2, 1922, dismissed the complaint. (Tr., 141-2.) The same date the board entered final order equalizing the assessments of the different counties (State Board's Ex. 18, Tr., 137 to 141), and certified to the county clerk of each county the results of the equalization for that county, as required by statute. (Tr., 19.) Appellees' own evidence in the court

below shows that after equalization the assessed value of real estate was only 61 to 75 per cent of actual value.

Section 5979 (App. 77) requires that immediately upon notice of the equalization proceedings of the State Board, the County Board shall make the tax levies. Section 5984 (App. 78) requires that the tax lists be delivered to the county treasurers with an attached warrant, signed and sealed by the county clerk, commanding the treasurer to collect the taxes by seizure and sale of property under distress warrants (Secs. 6011, 6015, App. 78) or by demanding of any railroad agent in the county such money as may come into his hands, under penalty on the agent for failure to comply (Sec. 6017, App. 79). Taxes levied become a lien on personal property November 1st (Sec. 5823, App. 68) and on real estate December 1st (Sec. 5822, App. 68).

The rates of taxation are uniform on all property. The order of the State Board entered June 15, 1922 (Tr., 17, 123) assessing appellant's property at more than actual value, and the orders of the State Board entered August 2, 1922, dismissing appellant's complaint against said assessment (Tr., 141, 2) and equalizing and confirming the intentional and systematic underassessment of all other property (Tr., 137-142), subjected appellant to deliberate and systematic discrimination in taxation.

The Nebraska statutes do not provide for suits by the state to collect taxes or to create liens for same on property. No such suits are necessary. The statutes make it the duty of the county treasurers to collect taxes in the most summary and arbitrary manner by seizure of goods and money. The liens attach by virtue of the statute. There is no statutory provision for payment under

protest of any part of taxes alleged to be discriminatory, and no right to recover same by suit or otherwise.

APPELLANT'S CONTENTIONS.

The two judges in the District Court found in Section 5901 what they held to be an adequate remedy at law, and because thereof, they held that the federal court could not grant equitable relief. The provisions regarding the writ of error had just been added by amendment in 1921 and when this assessment was made in 1922, and when the suit was instituted, had not been construed by the courts. The writ of error offered, at best, but a doubtful, uncertain and inadequate remedy. Furthermore, it does not operate as a supersedeas. There is no provision in Section 5901, or any other statute, which suspends, or gives the taxpayer the right to have suspended, the collection of taxes or the seizure of property or the clouds upon title thereto, pending writ of error from the State Board to the Supreme Court. Appellant's case clearly called for equitable relief. The discrimination was deliberate and systematic. Preventive relief was necessary to avoid multiplicity of suits, clouds on title and irreparable injury. Only an injunction restraining the county treasurers from collecting the taxes would afford adequate relief.

There was diversity of citizenship and requisite amount in controversy and a plain case for the exercise of the equity jurisdiction of the federal court. It is fundamental that the equity jurisdiction of the courts of the United States over judicial controversies between citizens of different states, is derived from the Constitution and Acts of Congress in conformity therewith and cannot be ousted by remedies at law in state courts.

Appellant contends that in determining whether or not

the equity powers of the federal court should have been exercised in this case, the statutes of Nebraska may be looked to for but three purposes:

First. To determine whether or not the statutes provide a substantive right to recover taxes paid under protest, or other legal remedy, which could be enforced at law in the Federal Court, as in *Singer Sewing Machine Company* v. *Benedict,* 229 U. S. 481. In this case appellees do not contend that any remedy at law in the Federal Court, was available to appellant.

Second. To determine whether or not a civil suit must be brought by the state to collect taxes, which the taxpayer may defend on any legal ground and might remove to the Federal Court if there was diversity of citizenship and requisite amount in controversy. (*Upshur County* v. *Rich,* 135 U. S. 467.) It is not contended in this case that any suit was provided for or necessary to collect taxes.

Third. To determine whether the assessment complained of was *final,* or was subject to an administrative correction by some other tribunal, which had power to *fix final valuation,* as in *Pittsburgh, etc., Ry.* v. *Board of Public Works,* 172 U. S. 32. In this case the assessment was final and any review by the Supreme Court of Nebraska, would be purely judicial. (*Bacon* v. *Rutland R. R. Co.* 232 U. S. 134.)

Appellant contends that:

1. The assessment of appellant's property by the State Board was final. Any review by the Supreme Court of Nebraska on writ of error was purely judicial. As the judicial stage had been reached, appellant had the right to litigate the validity of the final order of the State Board in the United States District Court.

2. This is a case in equity between citizens of different states. Appellant's right, under the Constitution and laws of the United States, to invoke the equity jurisdiction of the Federal Court, cannot be impaired by state statutes providing judicial remedies in state courts.

3. The supposed remedy by writ of error to the

Supreme Court of Nebraska, is, at best, inadequate, doubtful and uncertain.

4. The cases relied upon by the two judges in the District Court do not justify denial of an injunction in this case.

SPECIFICATION OF ERRORS RELIED UPON.

The District Court of the United States for the District of Nebraska erred:

First. In denying appellant's application for an interlocutory injunction. (Tr., 52.)

Second. In holding that for the redress of the wrongs recited in the petition appellant had an adequate remedy at law under the statutes of the State of Nebraska in prosecuting error proceedings to the Supreme Court of the State of Nebraska. (Tr., 52.)

Third. In holding that the uncertain, doubtful and speculative provisions of the laws of Nebraska with reference to error proceedings to the State Supreme Court, afforded appellant a plain, adequate and complete remedy. (Tr., 53.)

Fourth. In holding that the United States District Court was without jurisdiction by reason of a remedy at law under the state statutes when such remedy was not available at law in the federal court. (Tr., 52.)

Fifth. In refusing to issue an interlocutory injunction restraining defendant tax officials from collecting such part of taxes assessed against appellant's property as the court might find were based on an excessive and discriminatory valuation. (Tr., 53.)

Sixth. In refusing to issue an interlocutory injunction to restrain defendant tax officials from collecting from appellant taxes based upon intentional and systematic inequality of assessment, whereby appellant's property was deliberately assessed at more than its actual value and all other property, taxed at the same rate, intentionally and systematically assessed at less than actual value, in violation of appellant's right to the equal protection of the laws, guaranteed by the Fourteenth Amendment to the Constitution of the United States, and in violation of appellant's right to equality in taxation as required by the constitution and laws of the State of Nebraska. (Tr., 53.)

I.

The assessment of appellant's property by the State Board was final. Any review by the Supreme Court of Nebraska on writ of error was purely judicial. As the judicial stage had been reached, appellant had the right to litigate the validity of the final order of the State Board in the United States District Court.

THE ASSESSMENT OF APPELLANT'S PROPERTY BY THE STATE BOARD WAS FINAL.

Under the statutes of Nebraska, the State Board of Equalization and Assessment has original and *exclusive* jurisdiction of the valuation and assessment of railroads (*State ex rel* v. *State Board of Equalization and Assessment*, 81 Neb. 139, 115 N. W. 789), and is "by law constituted a special tribunal for the purpose of assessing railroad and telegraph properties" for which purpose it is "given exclusive jurisdiction." (*State ex rel. Bee Building* v. *Savage*, 65 Neb. 714, 91 N. W. 716.)

TAXATION IS NOT A JUDICIAL FUNCTION.

In *Pittsburgh, etc. Ry.* v. *Board of Public Works*, 172 U. S. 32, at page 39, this court said:

> "The levy of taxes is not a judicial function. Its exercise by the constitutions of all of the states, and by the theory of our English origin, is exclusively legislative."

In *Hutchinson* v. *City of Omaha*, 52 Neb. 345, 72 N. W. 218, the court held, Syllabus 6:

> "The levying of a tax is not a judicial act."

In *Upshur County* v. *Rich*, 135 U. S. 467, Mr. Justice Bradley said (p. 477):

> "The principle to be deduced from these cases is, that a proceeding, not in a court of justice, but car-

ried on by executive officers in the exercise of their proper functions, as in the valuation of property for the just distribution of taxes or assessments, is purely administrative in its character, and cannot, in any just sense, be called a suit; and that an appeal in such a case, to a board of assessors or commissioners having no judicial powers, and only authorized to determine questions of quantity, proportion and value, is not a suit; but that such an appeal may become a suit, if made to a court or tribunal having power to determine questions of law and fact, either with or without a jury, and there are parties litigant to contest the case on the one side and the other."

This decision was quoted from with approval by Chief Justice Taft in *Commissioners of Road Imp. Dist.* v. *St. Louis-Southwestern Ry. Co.* 257 U. S. 547, 560.

In *Auditor of State* v. *A. T. & S. F. R. R.* 6 Kan. 500, 507, the court said:

> "The raising of money for the support of government is essentially a legislative function. Where the money is raised by taxation, an ascertainment of the value of the property is a necessary prerequisite, and therefore an incident to the power to tax."

This case is cited in Cooley on Taxaton, 3rd Ed. p. 47, with *Hutchinson* v. *City of Omaha*, 52 Neb. 345. To the same effect are *Musser* v. *Adair*, 55 Ohio St. 466, and *Auditor General* v. *Pullman P. C. Co.* 34 Mich. 59, Cooley, J.

We take it as settled that the "valuation of property for the just distribution of taxes or assessments, is purely administrative in character." (*Upshur County* v. *Rich*, *supra*.)

Art. V. Sec. 1, of the Nebraska Constitution provides:

> "The judicial power of the state shall be vested in a supreme court, district courts, county courts, justices of the peace, and such other courts inferior to the Supreme Court as may be created by law; but other courts may be substituted by law for justices

of the peace within such districts, and with such additional civil and criminal jurisdiction as may be provided by law."

The Nebraska Constitution, Art. VIII, Sec. 1, provides:

> "The necessary revenue of the state and its governmental subdivisions shall be raised by taxation in such manner as the legislature may direct; but taxes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises, and taxes uniform as to class may be levied by valuation upon all other property. Taxes, other than property taxes, may be authorized by law. Existing revenue laws shall continue in effect until changed by the legislature."

The Nebraska Supreme Court has held that the power of taxation is committed to the legislature, by the Nebraska Constitution (*Board of Directors of Alfalfa I. D.* v. *Collins*, 46 Neb. 411, 64 N. W. 1086; *State ex rel, Atchinson & Neb. R. R.* v. *Board of County Commissioners*, 4 Neb. 537; *Hutchinson* v. *City of Omaha*, 52 Neb. 345, 72 N. W. 218; *State ex rel. Spelts* v. *Rowe*, 108 Neb. 232, 188 N. W. 107, 108.)

THE NEBRASKA CONSTITUTION FORBIDS THE EXERCISE OF OTHER THAN JUDICIAL FUNCTIONS BY THE NEBRASKA SUPREME COURT.

Art. II, Sec. 1 of the Nebraska Constitution provides:

> "The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons being one of these departments, shall exercise any power properly belonging to either of the others except as hereinafter expressly directed or permitted." (Constitution of Nebraska 1875 (as amended 1920), Article II, Section 1.)

The Supreme Court of Nebraska frequently has pointed out that, under the state constitution, the court cannot be vested by the legislature with anything but ju-

dicial functions. (*Dodge County* v. *Acom et al.* 61 Neb. 376, 85 N. W. 292; *State ex rel. Thompson* v. *Neble,* 82 Neb. 267, 117 N. W. 723; *State ex rel. Wright* v. *Savage,* 64 Neb. 684, 90 N. W. 898. *Winkler* v. *City of Hastings,* 85 Neb. 212, 122 N. W. 858, 860; *Tyson* v. *Washington County,* 78 Neb. 211, 110 N. W. 634; *Hooper Telephone Co.* v. *Nebraska Telephone Co.* 96 Neb. 245, 147 N. W. 674.)

In the last case the Nebraska court several times referred to and quoted from, *Prentis* v. *Atlantic Coast Line Co.* 211 U. S. 210, calling attention to the fact that in the Prentis case it appeared the Supreme Court of Virginia had been given *legislative power* in reviewing and passing upon actions of the State Corporation Commission, so that *legislation was not complete* until the court had acted, while the Nebraska court had no legislative power and the Nebraska constitution forbids conferring legislative power upon the courts.

THE WRIT OF ERROR FROM THE STATE BOARD TO THE STATE SUPREME COURT CAN PROVIDE ONLY A JUDICIAL REVIEW.

It is not contended by the state in this case that the Supreme Court of Nebraska had power to reassess the properties of the railroad companies on such writ.

While the State Board acts in a quasi-judicial capacity, it is an agency of the legislature to which has been delegated the legislative function of taxation under the Constitution. The Supreme Court of Nebraska has said it will not usurp the functions of the tribunals created by law for ascertaining the fair cash value of property for taxation and will not constitute itself a taxing board or board of equalization. (*Woods* v. *Lincoln Gas & E. Co.* 74 Neb. 526; 104 N. W. 931.) The Supreme Court of Nebraska has held that it is not within the province of the court to

review the assessment made by the State Board and raise or lower it as equity and good conscience might seem to require; that the court can only determine whether the board has proceeded in a regular manner and if so, cannot direct further action even though it may disagree with the conclusion reached. (*State ex rel. Bee Building* v. *Savage*, 65 Neb. 714, 91 N. W. 716.)

Applying the test made by this court in *Keller et al.* v. *Potomac Electric Power Co. et al.* 261 U. S. 428, the Supreme Court of Nebraska, under the Nebraska Constitution, has no power to review the exercise of discretion by the State Board, to raise or lower valuations or to make the order which the board should have made. Any review by the Supreme Court of Nebraska is purely judicial.

Therefore, there was no occasion for the federal court to withhold relief, as in *Prentis* v. *Atlantic Coast Line Co.* 211 U. S. 210, because the final administrative action of the state had not been taken. In this case the judicial stage had been reached and, as in *Bacon* v. *Rutland R. R. Co.* 232 U. S. 134, the railroad was free to assert its rights in the federal courts.

In *Bacon* v. *Rutland Railroad Company, supra,* it was pointed out by Justice Holmes, page 236, that on behalf of the Vermont Commission a motion was made to dismiss the bill on the ground that until appellee had taken the appeal to the Supreme Court of the state, provided by the Vermont statutes, it ought not to be heard to complain elsewhere. This court disposed of the contention by determining that the appeal provided by the Vermont statute was purely judicial, as distinguished from an administrative review, and that the railroad had a right to resort to the United States District Court. Recently this court has applied the principal of the Rutland Railroad case in *Prendergast et al* v. *New York Telephone Com-*

pany, 263 U. S. 43, and it was applied in *City Ry. Co.* v. *Beard*, 283 Fed. 313, 325, an injunction against discriminatory tax assessments.

In this case it is the theory of appellees that the federal courts would not act until the state statutory procedure had been followed to a conclusion. If so, the federal courts never could grant preventive relief in this case, because when the state stautory procedure had been followed to a conclusion there would be an adjudication of a judicial controversy. Such a situation arose in *Detroit & Mackinac Ry.* v. *Michigan Railroad Commission*, 235 U. S. 402. After an appeal to the state court from an order of the Commission, the railroad company filed a bill for injunction in the federal court. This court pointed out that the Michigan Constitution separates legislative, executive and judicial powers, giving only the last to the courts, just as the Nebraska Constitution does. Distinguishing the Prentis case, this court held that the review of the order of the Commision authorized by the Michigan statute was judicial, the judgment on such a review *res judicata*, and the subsequent action in the Federal District Court concluded thereby.

In this case the assessment of appellant's property by the State Board was final; the judicial stage had been reached. The provision for writ of error to the Supreme Court of Nebraska could provide no more than a judicial review. There being diversity of citizenship and requisite amount in controversy, appellant was entitled to assert its rights in the District Court of the United States. There was no occasion for the Federal Court to withhold action on grounds of comity.

II.

This is a case in equity between citizens of different states. Appellant's right, under the Constitution and laws of the United States, to invoke the equity jurisdiction of the Federal Court, cannot be impaired by state statutes providing judicial remedies in state courts.

The petition and evidence show deliberate overassessment of appellant's property by the State Board and intentional and systematic undervaluation of all other property by the local assessors and county boards, an illegal discrimination in violation of appellant's right to the equal protection of the laws, guaranteed by the Fourteenth Amendment, and in violation of the rule of equality in taxation prescribed by the Constitution and laws of Nebraska.

In *Greene* v. *Louisville & Interurban R. R. Co.* 244 U. S. 499, at page 508, this court held that such a claim "presents without question a real and substantial controversy under the Constitution of the United States." In *Raymond* v. *Chicago Union Traction Company,* 207 U. S. 20, at p. 36, this court said that in such a case "federal jurisdiction will arise because of the equal protection of the laws guaranteed by the Fourteenth Amendment." Where the jurisdiction of the courts of the United States is properly invoked, they may afford equitable relief against discriminatory state taxation which contravenes the principle of equality prescribed by the organic law and statutes of a state. (*Cummings* v. *National Bank,* 101 U. S. 153, 157; *Greene* v. *Louisville & Interurban Railroad Co.* 244 U. S. 499, 514; *Taylor* v. *Louisville & Nashville R. Co.* 88 Fed. 350.)

In the case at bar there is diversity of citizenship and requisite amount in controversy. The case made de-

mands preventive relief, to avoid multiplicity of suits, clouds on title and irreparable injury.

Without passing upon appellant's claim of intentional and systematical discrimination in taxation, the two judges denied the application for an interlocutory injunction solely upon the ground that appellant had an adequate remedy at law under the statutes of the State of Nebraska in prosecuting error proceedings to the State Supreme Court.

This decision of the two judges sitting in the District Court conflicts with the fundamental principle that the equity jurisdiction of the District Court of the United States over judicial controversies between citizens of different states is derived from the Constitution and Acts of Congress in conformity therewith and cannot be ousted by remedies at law in state courts.

> "The Constitution provides that the judicial power of the United States shall extend to all cases in equity arising between the citizens of different states." (*Neves et al.* v. *Scott et al.* 13 How. 267, 271.)

By Sec. 24 Judicial Code, Congress has duly conferred this power on the District Courts.

In *United States* v. *Howland*, 4 Wheat. 108, objection was made to a bill in equity because an adequate remedy at law was afforded by a statute of Massachusetts. Chief Justice Marshall said (p. 114):

> "As the courts of the Union had a chancery jurisdiction in every state, and the judiciary act confers the same chancery powers on all, and gives the same rule of decision, its jurisdiction in Massachusetts must be the same as in other states."

In *Payne* v. *Hook*, 7 Wall. 425, at p. 430, the court said:

> "We have repeatedly held 'that the jurisdiction of the courts of the United States over controver-

sies between citizens of different states cannot be impaired by the laws of states, which prescribe the modes of redress in their courts, or which regulate the distribution of their judicial power.' If legal remedies are sometimes modified to suit the changes in the laws of states, and the practice of their courts, it is not so with equitable. *The equity jurisdiction conferred on the federal courts is the same that the High Court of Chancery in England possesses; is subject to neither limitation nor restraint by state legislation, and is uniform throughout the different states of the Union.*" (Italics ours.)

In *Borer* v. *Chapman*, 119 U. S. 587, at p. 600, this court said:

"As a part of the ancient and original jurisdiction of courts of equity, it is vested, by the Constitution of the United States and the laws of Congress in pursuance thereof, in the federal courts, to be administered by the circuit courts in controversies arising between citizens of different states. It is the familiar and well settled doctrine of this court that this jurisdiction is independent of that conferred by the states upon their own courts, *and cannot be affected by any legislation except that of the United States.*" (Italics ours.)

In *Kirby* v. *Lake Shore & Mich. So. R. R.* 120 U. S. 130, this court said, p. 137:

"While the courts of the Union are required by the statutes creating them to accept as rules of decision, in trials at common law, the laws of the several states, except where the Constitution, laws, treaties and statutes of the United States otherwise provide, *their jurisdiction in equity cannot be impaired by the local statutes of the different states in which they sit.* In *United States* v. *Howland*, 4 Wheat. 108, 115, Chief Justice Marshall, speaking for the court, said, that, as the courts of the Union have a chancery jurisdiction in every state, and the judiciary act confers the same chancery powers on all, and gives the same rule of decision, its jurisdiction must be the same in all the states. The same view was expressed by Mr. Justice Curtis in his work on the jurisdiction of the courts in the United States

(p. 13), when he observed that 'the equity practice of the courts of the United States is the same everywhere in the United States, and they administer the same system of equity rules and equity jurisdiction throughout the whole of the United States *without regard to state laws.*'" (Italics ours.)

In *McConihay* v. *Wright*, 121 U. S. 201, 205, the court said:

"The contention of appellants, however, is that by the statute of West Virginia the omplainant might have maintained an action of ejectment. Reference is made in support of this contention to the West Virginia Code of 1868, c. 90, to show that an action of ejectment in that state will lie against one claiming title to or interest in lands, although not in possession. Admitting this to be so, it nevertheless, cannot have the effect to oust the jurisdiction in equity of courts of the United States as previously established. That jurisdiction, as has often been decided, is vested, as a part of the judicial powers of the United States, in its courts by the Constitution and acts of Congress in execution thereof. Without the assent of Congress that jurisdiction cannot be impaired or diminished by the statutes of the several states regulating the practice of their own courts. *Bills quia timet, such as the present, belong to the ancient jurisdiction in equity, and no change in state legislation giving, in like cases, a remedy by action at law, can, of itself, curtail the jurisdiction in equity of the courts of the United States. The adequate remedy at law, which is the test of equitable jurisdiction in these courts, is that which existed when the Judiciary act of* 1789 *was adopted, unless subsequently changed by act of Congress.*" (Italics ours.)

In *Arrowsmith* v. *Gleason*, 129 U. S. 86, at p. 98, this court said:

"But it is insisted that the Circuit Court of the United States, sitting in Ohio, is without jurisdiction to make such a decree as is specifically prayed for, namely, a decree setting aside and vacating the orders of the Probate Court of Defiance County. If by this is meant only that the Circuit Court can-

not by its orders act directly upon the Probate Court, or that the Circuit Court cannot compel or require the Probate Court to set aside or vacate its own orders, the position of the defendants could not be disputed. But it does not follow that the right of Harmening, in his lifetime, or of his heirs since his death, to hold these lands, as against the plaintiff, cannot be questioned in a court of general equitable jurisdiction upon the ground of fraud. If the case made by the bill is clearly established by proof, it may be assumed that some state court, of superior jurisdiction and equity powers, and having before it all the parties interested, might afford the plaintiff relief of a substantial character. But whether that be so or not, it is difficult to perceive why the Circuit Court is not bound to give relief according to the recognized rules of equity, as administered in the courts of the United States, the plaintiff being a citizen of Nevada, the defendants citizens of Ohio, and the value of the matter in dispute, exclusive of interest and costs, being in excess of the amount required for the original jurisdiction of such courts.

A leading case upon this point is *Payne* v. *Hook*, 7 Wall. 425, 430. That was a suit, in the Circuit Court of the United States for Missouri, by a citizen of Virginia, against a public administrator, to obtain a distributive share of an estate then under administration in a court of Missouri. It was objected that the complainant, if a citizen of Missouri, could obtain redress only through the local Probate Court, and that she had no better or different rights by reason of being a citizen of Virginia. But this court, observing that the constitutional right of the citizen of one state to sue a citizen of another state in the courts of the United States, instead of resorting to a state tribunal, would be worth nothing, if the court in which the suit is instituted could not proceed to judgment and afford a suitable measure of redress, said:

'We have repeatedly held "that the jurisdiction of the courts of the United States over controversies between citizens of different states, cannot be impaired by the laws of the states which prescribe

the modes of redress in their courts, or which regulate the distribution of their judicial power.' "

In this case equity jurisdiction is invoked to obtain relief against *fraud*—systematic and intentional discrimination in tax assessment—which is one recognized ground for equitable interference in such cases, (*Green* v. *Louisville & Interurban R. R. Co.* 244 U. S. 499, 517-8; *Taylor* v. *Louisville & Nashville R. Co.* 88 Fed. 350; *Cummings* v. *National Bank*, 101 U. S. 153), and one reason why review by appeal or error from the body charged with the fraud, is inadequate. (*Taylor* v. *Louisville & Nashville R. Co.* 88 Fed. 350, 359; *Wilson et al.* v. *Illinois Southern Ry. Co.* January 14, 1924, No. 131, October Term, 1923, U. S. Supreme Court; 44 Sup. Ct. 203, 204.)

In *Mississippi Mills* v. *Cohen*, 150 U. S. 202, the United States Circuit Court had denied jurisdiction in equity because a statute of the State of Louisiana afforded an adequate remedy at law. This court reversed the case on the ground that the jurisdiction of federal courts sitting as courts of equity cannot be enlarged or diminished by state legislation.

In *Smyth* v. *Ames*, 169 U. S. 466, at p. 516, this court said:

> "We cannot accept this view of the equity jurisdiction of the circuit courts of the United States. The adequacy or inadequacy of a remedy at law for the protection of the rights of one entitled upon any ground to invoke the powers of a federal court, *is not to be conclusively determined by the statutes of the particular state in which suit may be brought.* One who is entitled to sue in the federal circuit court may invoke its jurisdiction in equity whenever the established principles and rules of equity permit such a suit in that court; and he cannot be deprived of that right by reason of his being allowed to sue at law in a state court on the same cause of

> action. * * * But if the case in its essence be one cognizable in equity, the plaintiff—the required value being in dispute—may invoke the equity powers of the proper circuit court of the United States whenever jurisdiction attaches by reason of diverse citizenship, or upon any other ground of federal jurisdiction. *Payne* v. *Hook*, 7 Wall. 425, 430; *McConihay* v. *Wright*, 121 U. S. 201, 205." (Italics ours.)

In *Singer Sewing Machine Co.* v. *Benedict*, 229 U. S. 481, at p. 486, referring to decisions of the Colorado court on the statutory remedy, this court said:

> "We refer to these cases, not as defining the jurisdiction in equity of the Circuit Court, *for that they could not do* (*Payne* v. *Hook*, 7 Wall. 425, 430; *Whitehead* v. *Shattuck*, 138 U. S. 146; *Smyth* v. *Ames*, 169 U. S. 466, 516), but as showing that the Colorado statute gave to one who should pay illegal taxes a right to recover back from the county the money so paid. *This right was one which could be enforced by an action at law in the Circuit Court*, no less than in the state courts, if the elements of federal jurisdiction, such as diverse citizenship and the requisite amount in controversy, were present. *Ex Parte McNiel*, 13 Wall. 236, 243; *United States Mining Co.* v. *Lawson*, 134 Fed. Rep. 769, 771." (Italics ours.)

Other decisions of this Court holding that the constitutional right to invoke the equity jurisdiction of the courts of the United States, on the ground of diversity of citizenship, cannot be denied because of a remedy at law in a state court:

Barber v. *Barber*, 21 How. 582, 590-91.
Johnson v. *Waters*, 111 U. S. 640, 667.
Ridings v. *Johnson*, 128 U. S. 212, 217.
Smith v. *Reeves*, 178 U. S. 436, 444.
Waterman v. *Canal-Louisiana Bank Co.* 215 U. S. 33, 43.
McClellan v. *Carland*, 217 U. S. 268, 281.

In *Borden's Condensed Milk Co.* v. *Baker,* 177 Fed. 906, the Circuit Court of Appeals, Third Circuit, stated, p. 911:

> "The test is always whether the remedy under examination is available in the Federal Courts. If it is not, its existence does not affect the equitable jurisdiction of the Circuit Court. As we understand the decisions, these rules have been applied from the beginning of the Federal jurisdiction, and have not been departed from in any authoritative decision." (Citing cases.)

The following are some of the many cases in the lower Federal courts which support this statement:

Bean v. *Smith et al.* 2 Fed. Cas. No. 1174, p. 1150 (Justice Story, sitting in the Circuit Court, District Rhode Island).

Cropper et al. v. *Coburn et al.* 6 Fed. Cas. No. 3416, p. 871 (Justice Curtis, sitting in the Circuit Court, District of Massachusetts).

Breeden v. *Lee et al.* 4 Fed. Cas. No. 1828, p. 51 (District Judge Hughes).

Gordon et al. v. *Hobart et al.* 10 Fed. Cas. No. 5609, p. 797 (Justice Story, sitting in the Circuit Court, District of Maine).

Mayer v. *Foulkrod et al.* 16 Fed. Cas. No. 9341, p. 1234 (Justice Washington, sitting in the Circuit Court, Eastern District of Pennsylvania).

Kimball v. *Mobile,* 14 Fed. Cas. No. 7744, p. 492 (Circuit Judge Woods, Circuit Court, Southern District of Alabama).

Parsons et al. v. *Lyman et al.* 18 Fed. Cas. No. 10780, p. 1263 (District Judge Shipman).

Pratt et al. v. *Northam et al.* 19 Fed. Cas. No. 11376, p. 1255 (Justice Story, sitting in Circuit Court, District of Rhode Island).

Frazer & Chalmers v. *Colorado Dressing & Smelting Co.* 5 Fed. 163, District Judge Hallett, Circuit Court, District Colorado.

Pulliam v. *Pulliam*, 10 Fed. 23, District Judge Hammond, Circuit Court, Western District Tennessee.

Pittsburg C. & St. L. R. Co. v. *Keokuk & Hamilton Bridge Co.* 68 Fed. 19, Circuit Judge Jenkins, Circuit Court of Appeals, Seventh Circuit.

Ray v. *Tatum*, 72 Fed. 112, Circuit Judge McCormick, Circuit Court of Appeals, Fifth Circuit.

First National Bank of Chicago v. *Steinway et al.* 77 Fed. 661, Circuit Judge Acheson, Circuit Court, Western District of Pennsylvania.

Railroad & Telephone Companies v. *Board of Equalizers*, 85 Fed. 302, 318, District Judge Clark, Circuit Court, Md. District Tennessee.

Pokegama Sugar Pine Lumber Co. v. *Klamath River Lumber & Improvement Co.* 96 Fed. 34, Circuit Judge Morrow, Circuit Court Northern District California.

United States Life Insurance Co. v. *Cable*, 98 Fed. 761, District Judge Bunn, Circuit Court of Appeals, Seventh Circuit.

Sowles v. *First National Bank of Plattsburg et al.* 100 Fed. 552, District Judge Wheeler, Circuit Court District of Vermont.

Schmidt v. *West*, 104 Fed. 272, District Judge Baker, Circuit Court, District of Indiana.

Niagara Fire Insurance Co. et al. v. *Cornell*, 110 Fed, 816, District Judge McPherson, Circuit Court, District of Nebraska.

Peck et al. v. *Ayers & Lord Tie Co.* 116 Fed. 273, Circuit Judge Severns (with Judges Lurton and Day), Circuit Court of Appeals, Sixth Circuit.

Barrett v. *Twin City Power Co. et al.* 118 Fed. 861. Circuit Judge Simonton, Circuit Court, District South Dakota. Affirmed *Twin City Power Co.* v. *Barrett*, 126 Fed. 302, District Judge Keller, Circuit Court of Appeals, Fourth Circuit.

National Surety Co. v. *State Bank*, 120 Fed. 593, Circuit Judge Sanborn, Circuit Court of Appeals, Eighth Circuit.

Jones v. *Mutual Fidelity Co.* 123 Fed. 506, 519, District Judge Bradford, Circuit Court, District of Delaware.

Brun et al. v. *Mann*, 151 Fed. 145, Circuit Judge Sanborn (with Judges Van Deventer and Phillips) Circuit Court of Appeals, Eighth Circuit.

Butler Bros. Shoe Co. v. *United States Rubber Co.* 156 Fed. 1, 18, Circuit Judge Sanborn (with Judges VanDeventer and Philips), Circuit Court of Appeals, Eighth Circuit. Certiorari denied 212 U. S. 577.

Spencer v. *Watkins*, 169 Fed. 379, 381, Circuit Judge Hook (with Judges VanDeventer and Adams), Circuit Court of Appeals, Eighth Circuit. Certiorari denied 215 U. S. 605.

Empire Circuit Co. v. *Sullivan*, 169 Fed. 1009, District Judge Martin, Circuit Court, Southern District, New York.

Western Union Telegraph Co. v. *Trapp*, 186 Fed. 114, 121, District Judge Riner (with Judges Adams and Munger), Circuit Court of Appeals, Eighth Circuit.

Richardson v. *Pennsylvania Coal Co.* 203 Fed. 743, 746, District Judge Witner, District Court Md., Pennsylvania.

Union Pacific Railroad Co. v. *Commissioners of Weld County,* 222 Fed. 651, 654, Circuit Judges Hook and Smith, and District Judge Amidon.

St. Louis-San Francisco Ry. Co. v. *McElvain,* 253 Fed. 123, 126.

Nevada California Power Co. v. *Hamilton,* 235 Fed. 317, 338, District Judge Farrington, District Court, District of Nevada.

Franklin et al. v. *Nevada California Power Co.* 264 Fed. 643, 645, Circuit Judge Ross (with Judges Gilbert and Hunt), Circuit Court of Appeals, Ninth Circuit.

Cleveland Cliffs Iron Co. v. *Village of Kinney,* 262 Fed. 980, 984, District Judge Booth, District Court, District of Minnesota.

C. & N. W. Ry. Co. v. *Railroad & Warehouse Commission of Minnesota,* 280 Fed. 387, 393, District Judge Booth, District Court, District of Minnesota.

Chicago R. I. & P. Ry. Co. v. *Risty,* 282 Fed. 364, 371, District Judge Elliott, District Court, District of South Dakota.

C. & N. W. Ry. v. *Evland,* 285 Fed. 425, 428, District Judge Elliott, District Court, District of South Dakota.

In the following text books the same rule is stated:

1 High on Injunctions, 4th Ed., Sec. 29, p. 47.

1 Foster Federal Practice, 6th Ed. Sec. 80, p. 565.

1 Pomeroy's Equity Jurisprudence, 4th Ed., Secs. 295-7, pp. 576-583.

21 Corpus Juris, Equity, Sec. 17 (2), pp. 42-4.
1 Street's Fed. Eq. Prac., p. 30, Secs. 45 and 47.
Simkins Fed. Eq. Suit (Rev. Ed.), p. 275.

Appellees are asking no less than outright repudiation of all the foregoing authorities and nullification of the constitutional and statutory provisions vesting in the courts of the United States jurisdiction over controversies between citizens of different states.

The reasons for conferring this jurisdiction on the courts of the United States are familiar. In *Marshall* v. *Baltimore and Ohio R. R. Co.* 16 Howard, 314, at 326, this court quoted, with approval, from Federalist No. 80, as follows:

> "It may be esteemed as the basis of the Union, 'that the citizens of each state shall be entitled to all the privileges and immunities of the citizens of several states.' And if it be a just principle, that every government ought to possess the means of executing its own provisions by its own authority, it will follow, that in order to the inviolable maintenance of that equality of privileges and immunities, the national judiciary ought to preside in all cases, in which one state or its citizens are opposed to another state or its citizens."

This court then said:

> "Now, if this be a right, or privilege guaranteed by the Constitution to citizens of one state in their controversies with citizens of another, it is plain that it cannot be taken away from the plaintiff by any legislation of the state in which the defendant resides. * * * It was well remarked by Mr. Justice Catron, in his opinion delivered in the case of Rundle, already referred to, that 'if the United States courts could be ousted of jurisdiction, and citizens of other states be forced into the state courts, without the power of election, they would often be deprived, in great cases, of all benefit contemplated by the Constitution.' "

In *Hyde et al.* v. *Stone*, 20 Howard, 170, at p. 175, this court said:

> "But this court has repeatedly decided that the jurisdiction of the courts of the United States over controversies between citizens of different states cannot be impaired by the laws of the states, which prescribe the modes of redress in their courts, or which regulate the distribution of their judicial power. * * * But the courts of the United States are bound to proceed to judgment, and to afford redress to suitors before them, in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction. (*Suydam* v. *Broadnax*, 14 Pet. 67; *Union Bank* v. *Jolly, Adm'r*, 18 How. 503.)"

Under the order of Judges Lewis and Munger in the case at bar, what becomes of the ancient rule, established in this court for a hundred years, that the remedy at law referred to in Sec. 267 of the Judicial Code as preventing the exercise of the equity jurisdiction of the federal courts, means only a remedy at law *in the federal court?*

What becomes of *Payne* v. *Hook* and the long line of similar decisions of this court, if appellant is to be turned away from a federal court of equity in this case? What becomes of the constitutional provision that the judicial powers of the United States shall extend to all cases in equity arising between citizens of different states?

The two judges in the District Court disregarded these authoritative decisions and looking to a confused and doubtful state statute, unconstrued by the state courts, discovered in it a supposed remedy. There is, and can be, no pretense that this fancied remedy was available in the federal court. Therefore, under the decisions of this court, it furnished no reason for withholding the relief to which appellant was plainly entitled.

The federal courts have shown a proper reluctance to

interfere unnecessarily in fiscal affairs of the state governments, but however important it may be that the State of Nebraska obtain necessary revenue, it is equally important that its officers proceed in a lawful manner and within the limitations prescribed by the federal constitution. The petition and evidence showed plain violation of rights guaranteed to appellant by the Fourteenth Amendment. Appellant is a citizen of Illinois. A sum of money far in excess of the requisite amount is in controversy. To prevent clouds upon its titles, multiplicity of suits and irreparable injury, appellant appealed to a federal court of equity to enjoin the state officers from violating the rights guaranteed appellant by the Fourteenth Amendment. Under the Constitution of the United States and the Judicial Code appellant is entitled to have its rights determined by a federal court of equity. The District Court erred in holding that the ancient chancery jurisdiction of the federal court was ousted by the state statute.

III.

The supposed remedy by writ of error to the Supreme Court of Nebraska, is, at best, inadequate, doubtful and uncertain.

The statute providing writ of error from the State Board to the Supreme Court of Nebraska was passed in 1921, and had not been construed by the Nebraska Court when the discriminatory assessment of appellant's property was made in 1922. At the time this suit was instituted, there were many reasons why the statutory writ of error did not appear to furnish a plain, adequate or complete remedy:

THERE WAS GRAVE DOUBT WHETHER THE WRIT OF ERROR WAS AVAILABLE TO APPELLANT.

While the State Board had considered the complaints of appellant and other railroad companies, there was nothing in the statutes which specifically authorized such procedure. The State Board performs two separate and distinct functions. It acts as a Board of *Assessment* at its May meeting and as a Board of *Equalization* at its July meeting. The July meeting is provided for in Sec. 5901, which gives the writ of error to the Supreme Court. By that section the Board is directed to equalize from the *abstracts* sent in by each county. The statute (Sec. 5977, App. 75) does not require that the abstracts include railroad property. Under a strict construction of the statute there was ground for claiming that the railroad assessment was not before the State Board at the equalization meeting. Also, Section 5901 authorizes the State Board to equalize "between counties" and "between classes and kinds of property in any county." This provision of the statute gave further basis for the argument that railroad property was not before the State Board for equalization purposes. In *Hacker* v. *Howe*, 72 Neb. 385, 101 N. W. 255, the Supreme Court held that the State Board did not deal with assessments of individual property owners and the statute seems to contemplate only an equalization between counties and between various classes of property within any county or tax district. The apportionment of the railroad assessments on an average valuation per mile in each county would make diffiicult any equalization thereof with other kinds or classes of property in any county or tax district, as the average mileage valuations are not comparable with the valuations of local property. Although the second sentence of Section 5901 uses the phrase "all

other property," same is so associated with the other words of the sentence that its construction might be subject to the rule of *ejusdem generis* (*Alabama* v. *Montague*, 117 U. S. 602) and restricted to property assessed for taxation in the several counties of the state.

The specification in Section 5901 that the State Board at its equalization meeting should consider the "railroads entirely within one county" was not without significance, because such railroads might be comparable with other property in the same county and the phrase might be held to exclude railroads in more than one county.

These considerations made it uncertain whether or not the assessment of appellant's property at the May meeting of the State Board might be held to be separate and distinct from the equalization proceedings of the State Board at the July meeting, so that if appellant prosecuted a writ of error to the Supreme Court under Section 5901 from the equalization order at the July meeting, it might be met with the contention that that statute did not provide any review of the assessment of railroad property at the May meeting.

The notice of hearing is required to be given only to the *counties*. Representatives of the *counties* are the only persons authorized to appear and object to increase or decrease of valuations. The statute does not provide that railroads, or other individual taxpayers, shall be notified, or permitted to appear, present evidence, preserve exceptions or prosecute error. The equalization by the State Board is not of a private, but of a public character. The words "any person, county or municipality affected thereby" may mean the county clerks, county assessors, members of the county boards, counties and municipalities,

as they are the individuals and governmental subdivisions notified and authorized to appear before the Board. Possibly the statute might be construed to include persons affected by an increase or decrease of valuation of any class of property *in any one county*, as railroads entirely within one county, which the statute requires the board to deal with. It is not clear that railroads like appellant are included.

For these reasons it was very doubtful whether appellant could take the writ of error mentioned in Section 5901.

Appellant filed with the State Board complaint against the assessment of its property and the State Board passed upon said complaint. However, there is nothing in the Nebraska statutes authorizing such procedure. Appellant was bound to expect that in construing Section 5901, the court would give appellant no greater right to writ of error than the court found the legislature had provided. If the writ of error was not available to appellant under the statute, it is obvious that by filing an unauthorized complaint with the State Board, appellant could not draw itself into the equalization proceedings of the board so as to be entitled to a writ of error therefrom.

FROM THE PRIOR DECISIONS OF THE SUPREME COURT OF NEBRASKA IT APPEARED THAT THE REMEDY BY WRIT OF ERROR WOULD NOT BE ADEQUATE.

The statute makes no provision for the practice to be followed on such a writ of error or the power of the Supreme Court to grant relief. It is not to be assumed that the Supreme Court would have any different power on this new writ of error than it has on other similar proceedings under the general practice in the State.

Woods v. *Lincoln Gas & Electric Co.* 74 Neb. 526, 104

N. W. 931, was a proceeding in error in the Supreme Court of Nebraska to review the judgment of the District court affirming the action of a city council, acting as a board of equalization. The Supreme Court of Nebraska said, page 931 of 104 N. W.:

> "At the outset of the discussion we deem it advisable to say that *this court will not usurp the functions of the tribunals created by law for ascertaining the fair cash value of property for taxation, and will not constitute itself a taxing board or board of equalization.* It will examine the errors assigned in the proceedings of the District Court in the same manner and to the same extent as in other error proceedings, and the same presumptions will be applied as in other cases. If the evidence is sufficient to support the judgment of the inferior tribunal, it will not be disturbed, even though our view of its effect should differ from that of the board of equalization." (Italics ours.)

The last mentioned case was cited with approval by the Supreme Court of Nebraska in *Sioux City Bridge Co.* v. *Dakota County,* 105 Neb. 834, 182 N. W. 485, March 25, 1921.

The Supreme Court of Nebraska has held that to warrant a reversal on writ of error it must affirmatively appear in the record that errors have been committed and the rights of the complaining party prejudiced (*Andrews* v. *Kerr,* 54 Neb. 618, 74 N. W. 1071); that error in the proceedings will not be presumed, but must be affirmatively shown (*Ashpole* v. *Hallgren,* 60 Neb. 196, 82 N. W. 623); and that original evidence cannot be received to alter, contradict or avoid the record (*MacDonald* v. *Bowman,* 40 Neb. 269, 58 N. W. 704).

In *State ex rel* v. *State Board of Equalization and Assessment,* 81 Neb. 139, 115 N. W. 789, an action for mandamus to compel the State Board to make a record of special findings with reference to as-

sessment of the property of the Union Pacific Railroad and to show what allowance was made for the fact that all other property in the state had been valued for taxation at less than its actual value, the Supreme Court of Nebraska said that the State Board had original and exclusive jurisdiction of valuation and assessment of railroads and was given wide discretion in the exercise of its powers and duties in that behalf. At p. 146 (115 N. W. p. 792) the court said:

> "There is no provision of the statutes requiring the respondent board to keep a record of its interlocutory rulings, or the reasons, therefor during the progress of a hearing upon the valuation of the property of railroad corporations for the purpose of taxation. While the orderly transaction of its business may prompt the board to keep such a record of its rulings upon such matters for its own convenience, yet it is not an essential requirement for the proper performance of its duties. There is no doubt that all the steps required by the statute in making an assessment should be preserved as a matter of record, in order to evidence and perpetuate the fact that the board has acted within its jurisdiction; but, as above stated, such record need not contain its rulings upon interlocutory questions, and when it records the matters necessary to confer upon it the power to act, its general proceedings, and the final result of its deliberations fixing the value of properties, it has performed all that the law contemplates in that behalf.
>
> * * * As clearly pointed out in *State* v. *Savage, supra,* the field of review of the action of the taxing board is only a narrow one at best, and this renders it the more essential that due regard be paid to the rights of the taxpayer during its proceedings."

In the recent case of *Chicago & N. W. Ry. Co.* v. *City of Albion,* ..... Neb. ....., 192 N. W. 233 (February 27, 1923), the railroad had requested the city council, acting as a board of equalization of special assess-

ments, to make a record of the evidence upon which it relied to support the proposed benefits; the board refused to do so. Its refusal was preserved in a bill of exceptions and presented to the District Court on writ of error. The State Supreme Court held that although the board had refused to disclose the evidence on which the assessment was based and the only evidence in the bill of exceptions was that offered by the railroad company, nevertheless, the board would be considered as having acted upon information and knowledge of the property, and the assessment would not be held erroneous even though the record did not set forth the evidence upon which the board acted.

State ex rel. Bee Building Co. v. *Savage,* 65 Neb. 714, 91 N. W. 716, was an action for mandamus against the State Board of Equalization and Assessment to compel a reassessment of certain property. The Supreme Court of Nebraska said, p. 729 of 91 N. W.:

> "We can only inquire into the matter for the purpose of determining whether respondents, in assessing the properties which it was their duty to assess, have expressed an honest judgment as to the assessable values upon sufficient information, or whether the method pursued in ascertaining and fixing the value of the property assessed was in such wanton and reckless disregard of their duties as to warrant the conclusion that they acted fraudulently. *It is not within the province of this court to review the assessment made by the board, and to raise or lower it as equity and good conscience might seem to require. We can only determine whether the board has proceeded in a legal manner and, if so, we cannot direct further action, even though we may disagree with the conclusion reached,* or regard the method of procedure as not the most appropriate and best calculated to secure, with the greatest certainty and accuracy a true valuation of the property assessed. If they have acted by assessing all the property it is their duty under the law to assess, and

> have proceeded in such manner that it cannot be said they have acted fraudulently in that which they have done, the court is powerless to correct the error, even though it be conceded that the assessment as made is lower than in justice it should have been." (Italics ours.)

Section 5842 (Appendix, p. 71) authorizes the State Board to act upon its own knowledge in assessing railroad property, without the introduction of evidence, and in the absence of any requirement that it keep more of a record than is necessary to show that it proceeded in a regular manner, it would be hopeless for appellant to attempt to correct a discriminatory assessment by review of the record of the State Board on writ of error.

On such a writ the presumption would be that the State Board had respected appellant's right to equality in taxation. The record of the State Board would not show the discrimination against appellant. The Supreme Court could not consider matters *de hors the record.* The facts upon which appellant's claim for relief is based could only be made to appear by extrinsic evidence. Such a remedy is plainly inadequate. (*Taylor* v. *Louisville & Nashville R. Co.* 88 Fed. 350, 359; certiorari denied 172 U. S. 647.)

In Nebraska the assessment, levy and collection of taxes are not equitable proceedings, must necessarily be governed by rules which in many respects may be considered arbitrary and the taxing powers and taxpayers must comply with these rules (*Darr* v. *Dawson County,* 93 Neb. 93, 139 N. W. 852.)

In *Hacker* v. *Howe,* 72 Neb. 385, 101 N. W. 255, the equalization order of the State Board resulted in increasing the assessed valuation of *money* beyond the actual par value thereof, but the Nebraska Supreme Court held that such overassessment of one item of property would

not affect the *legality of the order of the board,* that body not being concerned with the property of individual taxpayers.

In *Lincoln Telephone & Telegraph Co.* v. *Johnson County,* 102 Neb. 254, 166 N. W. 627, the Supreme Court held that a board of equalization could not be required to reduce assessment on the full value of plaintiff's property, because all other property was assessed at but a fraction of its true value, and that the plaintiff's only remedy was to endeavor to induce the assessors to assess all other property at full value. This decision was approved and followed in *Sioux City Bridge Co.* v. *Dakota County,* 105 Neb. 834, 182 N. W. 485, decided by the Supreme Court of Nebraska, March 25, 1921. This court reversed the Sioux City Bridge Case, January 2, 1923, (260 U. S. 441). Appellant's petition in this case was filed December 18, 1922, and the application for an interlocutory injunction denied January 10, 1923. At the time appellant filed its petition it was confronted with a statement of the Supreme Court of Nebraska that the rule was settled in Nebraska that assessments at true value would not be reduced because other property was assessed at less than true value. Even if appellant had had any hope of securing a review of its assessment by writ of error, the established rule in Nebraska precluded relief from such discriminatory assessments.

From the opinion of Judge Lewis it is obvious that he realized that the Nebraska Supreme Court has no authority to reduce assessments.

Judge Lewis said (Tr., 194):

> "We cannot assume that the State Board of Equalization would not have followed the opinion of the Supreme Court if it had found that there was an unequal adjustment of taxes on account of farm lands being assessed too low and the railroads too high, as is complained of here. * * * We must as-

> sume that the State Board of Equalization would have abided by the conclusions of the Supreme Court and have corrected the errors now complained of."

This statement shows the inefficacy and uncertainty of the supposed remedy. Judge Lewis did not suggest by what method of procedure the case would go back to the State Board, how the State Board could reconvene after the expiration of the statutory period of its meeting, how it could reassess appellant's property without statutory authority, or how the board could be caused to comply with the conclusions of the Supreme Court. Conceding that the correction of the erroneous assessment could not be made by the Supreme Court, nevertheless the District Court surrendered its equity jurisdiction because of a state statute which offered no more definite relief than an assumption that in some unknown manner a taxpayer might procure for itself the equal protection of the law, theretofore denied it.

Has a federal court of equity no better protection for substantial, constitutional rights?

THE WRIT OF ERROR DOES NOT OPERATE AS A SUPERSEDEAS OR PREVENT COLLECTION OF TAXES OR LIENS ON PROPERTY.

The Nebraska Supreme Court frequently has held that a writ of error or appeal, in other than capital cases, does not operate as a supersedeas and that a supersedeas can be had, as a matter of right, only where it is affirmatively provided by statute. In *Home Fire Insurance Co.* v. *Dutcher et al.* 48 Neb. 755, 67 N. W. 766, p. 767, the Nebraska court said:

> "A supersedeas is now almost everywhere so much controlled by statute, and the statutes are so different in their provisions, that but little assistance can be had from the adjudications of other states. After a severe struggle it became estab-

lished in England that an appeal of itself operated as a supersedeas. Following the analogy of this practice, it is held in some states that statutes providing special conditions, such as the giving of a bond, in order to affect a supersedeas, are merely restrictive in their character, and that the appeal itself works a supersedeas where there is no statute requiring a bond or a compliance with other conditions. A different doctrine has, however, been announced in this state; and it must be accepted as the established rule here that a supersedeas can be had, as a matter of right, only where it is affirmatively provided for by statute. *Gandy* v. *State*, 10 Neb. 243, 4 N. W. 1019; *State* v. *Judges of District Court*, 19 Neb. 149, 26 N. W. 723; *State* v. *Meeker*, 19 Neb. 444, 27 N. W. 427; *Cooperrider* v. *State*, 46 Neb. 84, 64 N. W. 372."

There is nothing in Sec. 5901 or any other Nebraska statute with reference to error proceedings from the order of the State Board of Equalization and Assessment which provides that such error proceedings shall operate as a supersedeas or gives the taxpayer the right to a supersedeas on such proceedings. Section 5975 (Appendix, p. 74), provides an appeal from actions of the County Board of Equalization to the District Court. That statute has no application to the assessment of railroad property by the State Board of Equalization, but its provisions with reference to staying the collection of taxes illustrate the policy of the Nebraska law. It provides:

> "No appeal shall in any manner suspend the collection of any tax or the duties of officers relating thereto, during the pendency of the same, and all taxes affected thereby, which may be collected, shall be kept by the treasurer in a special fund without distribution."

There is nothing in the Nebraska statutes which makes the writ of error from the State Board a supersedeas or which gives a railroad the right to have the levy and

collection of the taxes suspended pending the hearing of such a writ of error.

How can it be said that a remedy at law is adequate so as to make unnecessary preventive relief in equity when there is nothing in the legal remedy which gives the complaining party a right to stay the action complained of?

As heretofore pointed out, the tax levies are entered on the tax lists and Section 5984 (Appendix, p. 78), requires that the tax lists be delivered to the county treasurers with an attached warrant, signed and sealed by the county clerk, commanding the treasurer to collect the taxes, by seizure and sale of property under distress warrants (Secs. 6011 and 6015 App., p. 78), or by demanding of any railroad agent in the county such money as may come into his hands, under penalty on the agent for failure to comply. (Sec. 6017, App., p. 79.) Therefore, under the statutes of Nebraska, by an uninterrupted succession of statutory steps on the part of the State Board, County Boards, county clerks and county treasurers it became the mandatory duty of the county treasurers to collect taxes assessed against appellant on the discriminatory valuation. A writ of error from the State Board to the Supreme Court would not relieve those officers of their duty under the statute to proceed with the collection of the taxes and therefore would furnish no remedy.

THIS DOUBTFUL STATUTE DOES NOT CONSTITUTE A PLAIN, ADEQUATE AND COMPLETE REMEDY JUSTIFYING REFUSAL OF EQUITABLE RELIEF.

The statute is not clear as to who may prosecute the writ or what acts of the board are subject to such review. The statute is silent as to the practice to be followed on such writ of error and as to the power of the

Supreme Court to grant relief. The court could do no more than examine the record of the proceedings of the State Board for errors of law. The court had held that tax boards need not make a record of the evidence on which they act and the statute authorizes the State Board to act on its own knowledge. There is no statutory procedure by which the facts showing discrimination in assessment by the State Board might be preserved for review on writ of error. The Supreme Court of Nebraska has no tax assessing powers. There is no provision in the statutes for reassessment of railroad property by the State Board. It is conjectural as to how the State Board might be compelled to abide by the conclusions of the Supreme Court. The Supreme Court of Nebraska had not construed the statute in question. There was no case in Nebraska under any other statute where the Supreme Court had reviewed a decision of the State Board or corrected a discriminatory assessment by the State Board.

It was contrary to the repeated decisions of this court to turn appellant away from a federal court of equity solely upon the supposition that by carrying on pioneer litigation for the construction of a new statute appellant could have been able to obtain the relief to which it plainly was entitled. In *Atlantic Coast Line Railroad Co.* v. *Daughton*, 262 U. S. 413, at p. 426, this court said:

> "But the statute mainly relied upon is a recent one which appears not to have been construed and applied by the highest court of the state. In the absence of such decision, we cannot say that the remedy at law is plain and adequate; *Dawson* v. *Kentucky Distilleries & Warehouse Co.* 255 U. S. 288, 296; *Wallace* v. *Hines*, 253 U. S. 66, 68; *Shaffer* v. *Carter*, 252 U. S. 37, 47; *Union Pacific R. R. Co.* v. *Weld County*, 247 U. S. 282; *Davis* v. *Wakelee*, 156 U. S. 680, 688."

THE DECISIONS IN SIOUX CITY BRIDGE COMPANY VS DAKOTA COUNTY, 260 U. S. 441, AND CHICAGO, ROCK ISLAND AND PACIFIC RY. CO. VS. STATE (SUPREME COURT OF NEBRASKA, DECEMBER 31, 1923, UNREPORTED) HAVE NOT REMOVED THE DOUBT AND UNCERTAINTY AS TO THE REMEDY BY WRIT OF ERROR.

As hereinabove pointed out, this court reversed the decision of the Nebraska court in the *Sioux City Bridge* case January 2, 1923 (260 U. S. 441), after this suit had been instituted and heard in the court below.

Upon reversal of the Sioux City Bridge case the Nebraska Supreme Court rendered a further decision (_____ Neb. _____, 194 N. W. 729, July 9, 1923, remanding the case to the trial court to try the case on the merits. However, the Sioux City bridge litigation is not determinative of a proceeding by writ of error from the State Board to the state Supreme Court.

In the Sioux City Bridge case plaintiff *appealed* from the County Board of Equalization to the District Court and took further *appeal* to the State Supreme Court, under the provision of Section 5975 (Appendix, p. 74), which gives the right to such an appeal from the County Board, with provision that "*the court shall hear and determine anew all questions raised before the County Board which relate to the liability of the property to assessment, or the amount thereof*" and a further right of appeal to the Supreme Court. Appellant's property is excluded by statute from consideration by the County Board (Sec. 5972, Appendix, p. 73) and there is no such appeal provided by statute from the assessment of appellant's railroad property by the State Board. The narrow writ of error from the State Board, which is the only remedy claimed to have been open to appellant, would not permit examination of the question of the amount of the assessment. If the Sioux City

Bridge Company could not obtain relief from the Supreme Court of Nebraska on an appeal where the courts were directed to hear and determine *anew* all questions relating to the amount of an assessment, appellant had no prospect of obtaining relief on the narrow writ of error to which, at best, it was limited.

The Nebraska statute authorizing the successive appeals by the Sioux City Bridge Company, with trials *de novo* in the courts, made it possible for the Bridge Company to present to this court the question of intentional and arbitrary discrimination in assessment. Such a question could not be raised or passed upon in the Supreme Court of Nebraska on writ of error to the State Board, and appellant could not bring to this court a record presenting the question for review. Furthermore, this court took the Sioux City Bridge case on certiorari, which is not a writ of right. For these reasons the Sioux City Bridge case furnishes no criterion.

This court there held (260 U. S. 441, p. 446) that a taxpayer aggrieved by intentional discrimination in assessment is entitled to have his assessment reduced to the common level of other property. On writ of error to the State Board the Supreme Court of Nebraska could not have reduced the amount of appellant's assessment; it could have done no more than examine the record to determine whether the proceedings of the State Board were regular on their face. In holding that the writ of error was an adequate remedy in this case, the lower court has ascribed to the Supreme Court of Nebraska the very powers of tax assessment and equalization which that court has said it does not possess and will not usurp. (*Woods* v. *Lincoln G. & E. Co.* 74 Neb. 526, 104 N. W. 931.)

Long after the commencement of this suit and after the denial of an interlocutory injunction herein, The Chi-

cago, Rock Island and Pacific Railway Company took a writ of error to the Supreme Court of Nebraska, under Section 5901, from the 1923 assessment of its property by the State Board. In that case the railroad claimed such assessment was discriminatory because of over-valuation of its property and undervaluation of other property. December 31, 1923, a year after this case had been decided in the Federal District Court and long after this appeal had been docketed in this court, the Supreme Court of Nebraska rendered a decision in the Rock Island case (not yet reported) setting aside the assessment of the property of that railroad for 1923 taxes.

An examination of the opinion in that case discloses that the questions as to the application of the writ of error to the *assessment* of railroad property at the May meeting of the board, as distinguished from *equalization* of other property at the July meeting, the scope of review on writ of error, the procedure for remanding such a cause to the State Board and reassessment by the State Board, could not have been presented or argued. It hardly seems possible that the Nebraska court would have rendered such a decision, without making any reference to its former opinions and the statutes, if its attention had been directed thereto. Of course, the amount involved in the Rock Island case was relatively small; the valuation complained of was but little over $10,000,000 (Appellees' brief, p. 25) while the valuation complained of here is over $137,000,000. Obviously the question of the construction of the 1921 statute in that case did not give the Attorney General of Nebraska so much concern as it does in this case.

Even in the absence of any apparent contest as to the construction of the statute, the decision in the Rock Island case does not settle the uncertainties of Sec-

tion 5901. The court set aside the assessment and remanded the proceeding to the State Board, but the court itself was in doubt as to how the State Board might proceed to reassess the property. There is nothing in the Nebraska statutes which authorizes the State Board, acting as a board of assessment, to reconvene after the expiration of the statutory period of its meeting or to reassess railroad property. In the last paragraph of the opinion the court suggests that the State Board might adopt the procedure provided in Section 5882 (Art. VI) which the court says "seems to be well adapted" although not specifically applicable. Obviously the attention of the Nebraska court was not directed to the fact that Section 5882 is a part of Article VI, the Terminal Tax Law, which provides a separate assessment of railroad property for purposes of *city and village taxation.* Note 1, p. 6.) The Rock Island case, like this case, involved only *state, county, town, school and road taxation.* City and village taxation was not involved. Section 5883 (Art. VI) provides:

> "Limitations of Article. This Article (VI) shall not apply to or in any manner affect, the assessment, equalization, levy or collection of any *state, county, township, school district or road district tax* * * *." (Appendix, p. 73.)

Thus the Legislature of Nebraska has specifically provided that Section 5882, for reassessment of terminal property for city and village taxation, shall not apply to or in any manner affect the assessment of property for state, county, township, school and road taxation, the only taxation involved in the Rock Island case.

In the Rock Island case the Supreme Court of Nebraska said:

> "We desire in this connection to call special attention to Section 5842, Comp. St. 1922, which gives the Board power to consider all facts and informa-

tion not contained in the reports made by the railroad companies."

Section 5842 (Appendix, p. 71) authorizes the State Board to find the value "from all the information it is able to obtain."

In the last sentence of the Rock Island opinion the court said:

> "Where such information is considered, the source from which it has been obtained should, so far as possible, be mentioned in the record, so that a reviewing court may consult the same sources and thus stand in the shoes of the assessing body."

Heretofore the Nebraska court has held that the State Board need keep no more record than is necessary to show that it acted within its jurisdiction.

> "When it (the State Board) records the matters necessary to confer upon it the power to act, its general proceeding and the final result of its deliberations fixing the value of properties, it has performed all that the law contemplates in that behalf." *State ex rel. Union Pacific R. Co.* v. *State Board of Equalization and Assessment,* 81 Neb. 139, 115 N. W. 789, 792.

Nothing in the Nebraska statutes requires the board to make any record of the information on which it acts.

The Supreme Court of Nebraska, confronted with the difficulty of reviewing on order of the States Board in a proceeding where the Nebraska statutes do not require the Board to make any record of the information on which it acts, was impelled to suggest to the Board that it should make more of a record than the law requires. This is a striking illustration of the inadequacy of the statutory remedy.

No doubt many of the surprising features of the Rock Island case are the result of the absence of any apparent contest as to the scope of review on such writ of error.

However, there was no doubt in the mind of the court that the remedy was purely judicial. The court said:

> "The statements of value contained in this opinion are only approximate, and not intended to limit or control the State Board if or when it becomes necessary to assess or reassess the value of a complainant's line of railroad in Nebraska."

This indicates that the court did not intend to interfere with administrative functions of the State Board, and recognized that the writ of error was a *judicial* review.

EQUITY JURISDICTION IS NOT LOST BECAUSE, SINCE THE FILING OF THE SUIT, A REMEDY AT LAW MAY HAVE BECOME AVAILABLE.

When appellant filed its petition in this case in 1922 there was nothing in the statutes or decisions in Nebraska which might lead any taxpayer to expect that the Supreme Court of the state, on writ of error might or could grant relief from fraudulent discrimination in tax assessment. When appellant's petition was filed in this case the Supreme Court of Nebraska had repeatedly declared that it would not usurp the functions of the tax assessing board, that it would not constitute itself a Board of Equalization; that it would not disturb an assessment even though its view of the evidence differed from that of the board (*Woods* v. *Lincoln Gas & Electric Co.* 74 Neb. 526, 104 N. W. 931); that it was not within the province of the court to review the assessment made by the State Board and raise or lower it as equity and good conscience might seem to require, (*State ex rel. Bee Building* v. *Savage*, 65 Neb. 714, 91 N. W. 716); that it would not interfere with an assessment on the ground that other property had been assessed at a lower percentage of value. There was nothing in the law of Nebraska or the decisions of

its courts which might lead any taxpayer to expect relief in those courts from the discriminatory assessment shown in this case. (*Sioux City Bridge Co.* v. *Dakota County,* 105 Neb. 834; 182 N. W. 485.)

Whatever may be the effect of the subsequent decisions of this court in *Sioux City Bridge Co.* v. *Dakota County,* 260 U. S. 441, and of the Nebraska court in the Rock Island case, those decisions can have no bearing upon appellant's right to the relief prayed for, at the time the petition in this case was filed.

The statute in question had not been construed by the Supreme Court of Nebraska and the supposed remedy was, at best, doubtful and uncertain. Even if the decision in the Rock Island case removed the doubt and uncertainty as to the adequacy of the remedy by writ of error, such a decision, long after the filing of appellant's petition, would not defeat the equity jurisdiction of the federal court. In *Dawson* v. *Kentucky Distilleries Co.* 255 U. S. 288, it appeared that the legislature of Kentucky enacted a tax law in 1920. The Distilleries Company filed a petition in the federal court for an injunction restraining the enforcement of the law on the ground that it violated the State and Federal Constitutions. Three judges granted an interlocutory injunction and on direct appeal to this court the state contended that plaintiff had an adequate remedy at law, by recovery of the tax from the state officers. The right to recover back such taxes under the state law was uncertain when the injunction suit in the federal court was begun.

At p. 295, Justice Brandeis said:

> "It was not until November 16, 1920, which was after these appeals had been entered in this court, that *Craig* v. *Security Producing & Refining Co.* 189 Ky. 565, 568, settled that money paid under such circumstances could be recovered. * * * But whatever remedy Sec. 162 is now regarded as con-

ferring, it is clear that at the time this suit was brought they were not regarded in Kentucky as sufficiently adequate to oust the jurisdiction of equity to enjoin the illegal collection of taxes (citing cases). * * * *Nor is the equitable jurisdiction lost because since the filing of the bill an adequate legal remedy may have become available* (citing cases)."

IV.

The cases relied upon by the two judges in the District Court do not justify denial of an injunction in this case.

The two judges in the District Court referred to but three decisions of the Nebraska Supreme Court, as supporting their conclusion that the writ of error under the new statute would furnish an adequate remedy. The case principally relied upon was *Sioux City & Pacific R. R.* v. *Washington County,* 3 Neb. 30, decided fifty years ago, under a different statute and entirely different facts. It arose on an appeal to a district court from an order of a board of county commissioners, increasing plaintiff's assessment without notice or hearing, to which plaintiff was entitled, and at a time when it was alleged the statutory power of the board had expired. The District Court affirmed the board but the judgment was reversed by the Supreme Court, on writ of error, on the ground that the board, disregarding the time fixed by statute for its meeting, had met after its statutory power had expired, and had increased plaintiff's assessment without notice or hearing to which plaintiff was entitled.

In referring to this case Judge Lewis said (Tr., 194):

> "It is held in the Third Nebraska that the County Board of Equalization when it acts beyond its authority, or unjustly to the taxpayer is subject to be reviewed in that respect in the Supreme Court."

Of course it was unjust to the taxpayer to raise his assessment without notice and at a time when the statutory authority of the board had expired, but it was not because of the *injustice* that the Supreme Court set aside its order; it was because the board had exceeded its statutory power and acted without jurisdiction, which irregularities were apparent from the record and within the scope of review on writ of error.

Judges Lewis and Munger also referred to *McGee et al.* v. *State ex rel. North American Cattle Co.* 32 Neb. 149, 49 N. W. 220, which was an action, brought in the District Court, for mandamus to compel the County Board of Equalization to reassemble and correct its record of an increase of plaintiff's assessment made without notice and without jurisdiction. The Supreme Court held that mandamus was not a proper remedy but said that a petition in error to the District Court would have been the remedy to set aside the unauthorized action of the County Board, citing *Sioux City & Pacific Railroad* v. *Washington County,* 3 Neb. 30.

The third and last case referred to by Judge Lewis and Judge Munger was *State ex rel.* v. *Board of Equalization and Assessment,* 81 Neb. 139, 115 N. W. 789, an action for mandamus against the State Board of Equalization to compel it to reconvene and make a record of special findings with reference to the assessment of the property of the railroad, among the other things to show what allowance it had made for the fact that all other property in the state was valued for taxation at less than actual value. The Supreme Court held that the State Board could not be required, by mandamus, to make the record in question; that the board had original and exclusive jurisdiction of valuation and assessment of railroads and was given a wide discretion in the exercise of its powers and duties in that behalf; that the returns made by the

railroad were not conclusive; that the State Board was authorized, from all information it was able to obtain, to find the true value of the property; that it was the duty of the board to consider all facts entering into such value but that as it was not practicable or possible to find the exact value of different items of property and as conclusions of the board were in the nature of a compromise of the views of the individual members, the board should not be required to state the particular value of several items leading up to the final valuation. The court further held that while there was no provision for an appeal from the final order of the board, nevertheless the railroad might prosecute an error proceeding to the District Court of the county in which the board sat, citing *Sioux City & Pacific Railroad* v. *Washington County, supra;* that to make such error proceeding effective the rulings of the board must have been challenged and exceptions to such rulings made a matter of record; that this might be done if the matters presented were such as should be recorded but where they were not properly part of the record they must be preserved, if at all, by a bill of exceptions; that the statute did not require the board to keep a record of its interlocutory rulings or the reasons therefor but that the record of the board should show all the steps required by statute to show that the board acted within its jurisdiction; the court then said:

> "As clearly pointed out in *State* v. *Savage* the field of review of the action of a taxing board is only a narrow one at best and this renders it the more essential that due regard be paid to the rights of the taxpayer during its proceedings."

The decision of the case was that the statute did not require the board to make a record of the matters in question and therefore a writ of mandamus would not issue to compel it to do so. By dictum the court endeavored to indicate to plaintiff a possible method of pre-

serving exceptions to the rulings of the board, saying they must be presented, *"if at all,"* by a bill of exceptions.

However, in the recent case of *Chicago & N. W. Ry. Co.* v. *City of Albion,* 192 N. W. 233, decided February 27, 1923, where a local board of equalization refused to make a record of the evidence upon which it relied and such refusal was preserved in a bill of exceptions, the Supreme Court of Nebraska held, *on appeal,* that even though the only evidence in the bill of exceptions was that offered by the railroad company, nevertheless the board would be presumed to have acted upon information and knowledge of the property, and the assessment would not be held erroneous. As the State Board is authorized to act on its own knowledge and information, it is difficult to see how a bill of exceptions would be effective in error proceedings from the board.

Keokuk & Hamilton Bridge Co. v. *Salm,* 258 U. S. 122.

The case principally relied upon by Judges Lewis and Munger as justifying their denial of appellant's application for an interlocutory injunction because of the Nebraska statute, was the Keokuk & Hamilton Bridge case. Under the Illinois statutes, as pointed out by Justice Brandeis in that case, a taxpayer is not in danger of being deprived of property without due process of law or of the equal protection of the law by any act of the *assessing officers,* because there are ample opportunities both to question the amount and validity of an assessment before administrative tribunals and to resist collection of discriminatory taxes in actions which must be brought by the state in court to collect the taxes.

As said by the court in the *Keokuk Bridge case,* p. 124:

> "Every such assessment made by the county assessors is subject to revision by them. Moreover upon complaint in writing that an assessment is in-

correct, a Board of Review is required to give a hearing and to correct the assessment 'as shall appear to be just.' "

The Keokuk Bridge Company had not availed itself of those methods of administrative correction.

In Nebraska there is no statutory provision authorizing revision of an assessment by the State Board; the complaint filed by appellant was allowed only as a matter of grace. Appellant was vigilant in its efforts to obtain relief from the State Board, even going beyond the statute. In Nebraska there is no administrative correction of an assessment by any other tribunal. The review by the Supreme Court could be only a judicial review.

This court said, page 125 of the *Keokuk* case:

> "In Illinois, payment of taxes as finally assessed and extended against real estate is enforced, in the first instance, not by distraint or levy, but by legal proceedings. An application is made by the collector to the County Court for judgment against the property. The proceeding in the County Court is a civil suit for the collection of a debt. The owner may appear and defend on any legal ground; among others, that the assessment was deliberately or fraudulently discriminatory and that hence, the tax is void.
>
> From the judgment of the County Court an appeal may be taken to the Supreme Court of the state upon giving a bond to pay the amount of the assessment and costs; and the appeal will operate as a supersedeas if the appellant deposits with the county collector an amount equal to the amount of the judgment and costs."

In Nebraska payment of taxes is enforced in the first instance by distraint and levy (Secs. 5984, 6011 and 6015), or in the case of corporations, by demanding from any agent in the county the money in his hands, with criminal penalties on the agent for failure to comply.

(Sec. 6017.) No suit is necessary to obtain judgment for taxes in Nebraska and the taxpayer has no opportunity to defend.

In the *Keokuk Bridge* case, this court said, page 125:

> "In Illinois, where it is claimed that a tax is void because of over-valuation which is fraudulently discriminatory the courts of the state will grant relief in equity if the plaintiff has sought correction from the Board of Review and failed to secure redress."

In Nebraska the statute (Sec. 6018) forbids injunctions to restrain the collection of taxes except on the ground that the tax was assessed for an unauthorized or illegal purpose.

In the *Keokuk* case, at page 125, this court said:

> "There is no basis for the contention that a resort to a suit such as this was necessary to prevent, either a sale for an illegal tax creating a cloud on title, or multiplicity of suits to recover back the tax or other irreparable injury."

Under the Nebraska statute delinquent taxes are a first lien upon real estate; no sale is necessary to create a cloud on title; the statute does that. Appellant's petition showed that multitudinous suits would arise out of the levy and sale of its property, seizure of its funds and arrest of its agents in seventy-two counties in the state; that the excessive taxes would be wholly lost to appellant without hope of recovery back and that appellant would sustain irreparable injury in its business by the seizure of its property and equipment, and interruption of its business as a common carrier.

The writ of error to the Supreme Court would not operate as a supersedeas; regardless of such writ of error the liens would have attached and the county treasurers have been required by statute to collect the taxes.

In the Keokuk case this court said:

> "The bill fails, also, for another reason, to state

a case entitling plaintiff to relief * * * under such circumstances a plaintiff seeking an injunction must aver payment or tender of the amount of taxes confessedly due, or at least offer to pay such amount as the court may find to be justly or equitably due." (p. 125.)

Appellant's bill offered to pay such amount of the tax as the court found due; the court ordered payment of seventy-five per cent.

The importance of these distinctions is manifest from the recent decision of this court in *Wilson et al.* v. *Illinois Southern Ry. Co.* October Term, 1923, No. 131, January 14, 1924; 44 Sup. Ct. 203. Like the Keokuk Bridge case, the Wilson case was a bill to restrain collection of taxes in Illinois. However, notwithstanding the liberal provisions in Illinois for correcting erroneous assessments and resisting collection of taxes thereon, in the Wilson case this court held that equitable relief was necessary to prevent multiplicity of suits, the property being in five counties, and distinguished the Keokuk Bridge case where the assessment was in a single county.

The statutes of Illinois provide one appeal from the state tax commission to the Circuit Court, upon the record of the evidence and proceedings before the commission, with a further appeal to the Supreme Court. Referring to that appeal this court said in the Wilson case:

> "How far such an appeal would be adequate upon a charge of fraud against the commission may be doubted, and the adequacy of the remedy at law must be clear. *Union Pacific R. R. Co.* v. *Weld County*, 247 U. S. 282, 285, 286."

The other cases cited by Judge Lewis and Judge Munger, are:

Pittsburgh, etc. Ry. v. *Board of Public Works*, 172 U. S. 32.

At p. 37, the court said:

> "The collection of taxes assessed under the authority of the state is not to be restrained by writ of injunction from a court of the United States, unless it clearly appears, not only that the tax is illegal, but that the owner of the property taxed has no adequate remedy by the ordinary processes of the law, and *that there are special circumstances bringing the case under some recognized head of equity jurisdiction.*" (Italics ours.)

This court pointed out, p. 44, that the statute provided that the assessment by the Board of Public Works should be final, unless the Railroad Company within thirty days after knowledge thereof appealed to the Circuit Court; that the assessment was *subject to full review by the* Circuit Court which was authorized to hear all evidence and confirm or *correct the valuation fixed by the board and to fix the true value of the property in question;* and that the right of appeal to the Circuit Court and the right to be heard and to offer evidence *before the valuation of its property for taxation was finally fixed afforded plaintiff ample opportunity to protect its interest.* The bill did not allege that there was any fraud in the assessment, that defendants had made any attempt to interfere with plaintiff's control of its real estate or that plaintiff had taken any appeal from the decision of the board to the Circuit Court of the county. The Pittsburgh Ry. had not called upon the administrative machinery provided by the state for the correction of erroneous assessments, and there were no grounds for equitable interference to prevent multiplicity of suits, cloud or title or irreparable injury. The cases cited by this court in the Pittsburgh Ry. case demonstrate this distinction. This court pointed out,

page 40, that in *Union Pacific Ry. Co.* v. *Cheyenne,* 113 U. S. 526, the bill showed that the levy complained of would involve plaintiff in a multiplicity of suits and would cloud the title to plaintiff's real estate, while in *Shelton* v. *Platt,* 139 U. S. 591, it appeared that complete compensation from the resulting injury could be had by recovery of damages in an action at law and there was no averment showing that plaintiff would suffer damage which was irremedial and that a court of chancery ought not to interpose except upon settled principles which govern its jurisdiction.

Dows v. *Chicago,* 11 Wall. 108, cited on page 37 of 172 U. S., holds that illegality of a tax will not justify interposition of a court of equity unless there be some special circumstances *bringing the case under some recognized head of equity jurisdiction,* such as *that the enforcement of a tax would lead to a multiplicity of suits, or produce irreparable injury, or where the property is real estate, throw a cloud upon the title of the complainant;* that if the tax was illegal the plaintiff might have brought suit to recover back the money or for damages against the officers, so that no irreparable injury would have followed to him from its collection; and that plaintiff would not have been compelled to resort to a multiplicity of suits to determine his rights. In the Dow case the tax in question was not levied on real estate, so there was no cloud on title. However, the Union National Bank of Chicago had filed a cross bill alleging that if the bank paid the tax in question on its shares out of dividends in its hands, which it would be required to do by the law of the state, the bank would be subject to a multiplicity of suits by the shareholders. This court said, page 112 of 11 Wall.:

> "Were it an original bill *the jurisdiction of the court might be sustained on that ground.* But as a cross bill it must follow the fate of the original bill."

Indiana Mfg. Co. v. *Koehne*, 188 U. S. 681.

Under the Indiana statute original assessments are made by a Board of Review; the taxpayer may appeal to the State Board of Tax Commissioners, which has power to determine whether the property is assessable and *to increase or reduce the assessment as it may deem proper.* Also, any taxpayer may appear before the Board of County Commissioners and show that he has paid taxes wrongfully assessed, whereupon the board is required *to order refund thereof.* The bill alleged that the assessment in question constituted a cloud upon title, that there was no adequate remedy at law, that a multiplicity of suits would be avoided and that irreparable injury would be prevented. This court said at p. 684:

> "It has long been the settled doctrine of the federal courts that the mere illegality of a tax, or the mere fact that a law upon which the tax is founded is unconstitutional, does not entitle a party to relief by injunction against proceedings under the law, but it must appear that the party has no adequate remedy by the ordinary process of the law, *or that the case falls under some other recognized head of equity jurisdiction, such as multiplicity of suits, irreparable injury, etc.*" (Italics ours.)

This court then held that the averment of cloud on title was not sustained; that the averment that plaintiff was without an adequate remedy at law was answered by the provisions of the Indiana statute which provided for the payment under protest and recovery back of the taxes; that the allegation that the bill would prevent a multiplicity of suits, could not be sustained because the recovery of all the taxes paid could have been had in one suit; and that no irreparable injury was averred; and that the right to resort to a federal court as a court of equity must be founded upon some ground of equitable jurisdiction recognized by the federal courts, and that

when no such ground appears, jurisdiction in equity cannot be maintained.

Burrill v. *Locomobile Co.* 258 U. S. 34.

This was a suit *at law* in the United States District Court, against the treasurer of the State of Massachusetts to recover alleged invalid taxes. The Massachusetts statute provided that any corporation aggrieved by exaction of such taxes should apply by petition to the Supreme Judicial Court of the state and that the state should promptly repay any sum adjudged to have been illegally exacted, with provision that this remedy should be exclusive. The defendant, Burrill, contended that this Massachusetts statute was a bar to the personal suit against him as treasurer. This court sustained that contention. The point was made (p. 37) that a state cannot tie up the plaintiff to suits in its own courts, but this court said, p. 38, that the question was whether a state could not limit the right of foreign corporations and the liability of its own citizens, and this court did not perceive why the state might not provide that only the author of the wrong should be liable for it, at least when the remedy offered is adequate and backed by the responsibility of the state; that while Congress, acting under the Constitution has given to the courts of the United States jurisdiction *in equity* that, speaking broadly, is the same in all the states and follows its own rules (R. S. Sec. 913) nevertheless as to trials at common law, except where the Constitution, treaties or statutes of the United States otherwise require or provide, the laws of the states are the rules of decision (R. S. Sec. 721); that the common law of Massachusetts on the liability of persons to an action of tort may be modified by the statutes of the state, at least until constitutional rights are impaired. The court said that whether in an

otherwise proper case the proceeding given by the statute could be instituted in the federal court was not presented for decision.

As the Burrill case was an action *at law* and as this court specifically distinguished jurisdiction of the federal courts in equity from their jurisdiction at law, it is a little difficult to see what applications the case has to appellant's petition in equity.

Missouri Pacific R. Co. v. *Conway & Vilonia Road District,* 280 Fed. 401.

A decision of the Circuit Court of Appeals, Eighth Circuit, affirming judgment of the District Court for the Eastern District of Arkansas, dismissing suits in equity to enjoin road district assessments. The Arkansas statute provided that a land owner, aggrieved by the assessment of his lands, should have the right to appeal to a state chancery court, with further appeal to the State Supreme Court, for review of the assessment and the statute gave the courts full power, on hearing *to correct the assessment.* The Circuit Court of Appeals held that when a state provides a tribunal for the hearing of complaints against an assessment, such tribunal has exclusive jurisdiction, citing *Pittsburgh, etc. Ry.* v. *Board of Public Works, Indiana Mfg. Co.* v. *Koehne,* and similar cases.

McLaughlin et al. v. *St. L. S. W. Ry. Co.* 232 Fed. 579.

It was held that the railroad was not entitled to an injunction from the federal court against assessment of benefits for a road improvement, where the Arkansas statutes provided that the assessment of benefits shall first be made by a Board of Assessors, certified to the County Court, which court shall enter its findings thereon, confirming, increasing or diminishing the assessments

and the finding of the County Court shall have the force and effect of a judgment. Any property owner may appeal from such judgment to the Circuit Court of the county to *correct the assessment.* The Circuit Court of Appeals cited *Indiana Mfg. Co.* v. *Koehne,* 188 U. S. 681, *Singer Sewing Machine Co.* v. *Benedict,* 229 U. S. 481, *Pittsburgh, etc. Ry. Co.* v. *Board of Public Works,* 172 U. S. 32, and held that the petitions for injunction should have been dismissed.

McDougal v. *Mudge,* 233 Fed. 235.

Held, that an injunction should not be granted against a tax assessment where the State Tax Commission is given full power to increase or decrease all taxes, so that all property shall bear its equal and just proportion, and the petitioner did not seek relief from the Tax Commission before applying for an injunction in the federal court.

Baldwin Tool Works et al. v. *Blue,* 240 Fed. 202.

A suit in equity to restrain the enforcement of certain taxes in West Virginia. The West Virginia statute provided that any taxpayer feeling aggrieved by the assessment made by the State Tax Commissioner, could apply to the Board of Public Works *for a hearing and correction* of such assessment and the board had full power to *make such order as might appear to be just and lawful.* It was held that as petitioner had not endeavored to obtain correction of the assessment, the federal court of equity should not interfere by injunction, citing *Indiana Mfg. Co.* v. *Koehne,* 188 U. S. 681.

The decisions referred to by Judges Lewis and Munger may be classified as follows:

1. *Dows* v. *Chicago,* 11 Wall. 108; *Hannewinkle* v. *Georgetown,* 15 Wall. 547; *State Railroad Tax Cases,* 92 U. S. 575; *Shelton* v. *Platt,* 139 U. S. 591,

and *Keokuk & Hamilton Bridge Co.* v. *Salm*, 258 U. S. 122, holding that mere illegality of a tax will not alone justify equitable relief, in the absence of such grounds of equity jurisdiction as cloud on title, irreparable injury or multiplicity of suits.

2. *Pittsburgh, etc. Ry.* v. *Board of Public Works*, 172 U. S. 32; *Indiana Manufacturing Co.* v. *Koehne*, 188 U. S. 681; *Keokuk & Hamilton Bridge Co.* v. *Salm*, 258 U. S. 122; *Missouri Pacific R. Co.* v. *Conway & Valonia Road District*, 280 Fed. 401; *McLaughlin* v. *St. Louis Southwestern R. Co.* 232 Fed. 579, and *McDougal* v. *Mudge*, 233 Fed. 235, in each of which the assessment in question was *not final* but was subject to an administrative review by some other tribunal, which had power to hear evidence and *fix final valuation*.

In *Pittsburgh, etc. Ry.* v. *Board of Public Works*, and the other cases grouped with it, the final action had not been taken and the parties complaining in the federal court had not called upon the administrative machinery provided by the state for the correction of erroneous assessments. Had they pursued the statutory methods for the correction of the alleged erroneous valuations in those cases, the reviewing tribunals had the power to make the orders which the assessing officers should have made. In this case the assessment by the State Board was final, and any review on error proceedings in the Supreme Court of Nebraska was purely judicial. It is not claimed that the Nebraska Court had the power to hear evidence or fix the amount of appellant's assessment. The judicial stage having been reached appellant was free to assert its rights in the federal court. A citizen of Illinois cannot be tied up in the state courts of Nebraska or deprived of its rights, under the Constitution and laws of the United States, to litigate, in the federal court, *judicial questions*.

CONCLUSION.

The action of the District Court is not sustained by the cases cited. In some it was held that a taxpayer by a suit at law, could recover taxes paid under protest, and in one suit prevent cloud on title, multiplicity of suits and irreparable injury. It is not contended that appellant in the case at bar had any such right of action for recovery of taxes. In other cases cited the taxpayer had not availed of the administrative agencies provided by the state for correction of assessments. The Nebraska statutes do not provide what this court described as "appeal in the legislative stage." The assessment of appellant's property by the State Board was final and it was clear that "in its final legislative action" the state would not respect appellant's right to equality in taxation. The Nebraska Supreme Court, limited by the state constitution to *judicial* functions, could not correct the legislative act of the State Board, and under the practice on writ of error, could do no more than examine the regularity of the proceedings of the board. Such a review was purely judicial. Not only was it doubtful and uncertain, but it was not an exclusive remedy. There being diversity of citizenship and requisite amount in controversy, appellant could assert its rights in the Federal Court. The District Court erred in refusing to exercise the equity jurisdiction conferred upon it by the Constitution and laws of the United States. The order denying appellant's application for an interlocutory injunction should be reversed.

Respectfully submitted,

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APPENDIX.

The following sections of the Nebraska Compiled Statutes, 1922, are cited in the foregoing brief:

Article II.

Section 5820. *Actual valuation.*—All property in this state, not expressly exempt therefrom, shall be subject to taxation, and shall be valued and assessed at its actual value. "Actual value," as used in this Act, shall mean its value in the market in the ordinary course of trade.

Section 5822. *Real property taxes—first lien.*—Taxes on all real property shall be a first lien thereon from and including the first day of December of the year in which they are levied until the same are paid, except general city taxes on real property within the corporate limits of cities of the metropolitan class, which shall be a first lien thereon from and including the first day of May following the levy, until the same are paid.

Section 5823. *Personal property taxes—first lien.*—Taxes assessed upon personal property shall be a first lien upon the personal property of the person to whom assessed from and after the first day of November of the year in which they are assessed, until paid.

Section 5825. *Taxes—first lien.*—All general taxes due the state and its governmental subdivisions shall be a first lien on the real estate on which levied, and takes priority over all other encumbrances and liens thereon.

Article V.

Section 5839. *Railroad assessment.*—The State Board of Equalization and Assessment is hereby empowered, and it is made its duty, to assess all property of the railroads and railroad corporations in the State of Nebraska. Provided, however, that all machine repair shops, general office buildings, store houses, and also all real and personal property outside of right-of-way and depot grounds, as of and belonging to any such rail-

road and telegraph companies, shall be listed for purposes of taxation by the principal officers or agents of such companies with the assessors of any precinct of the county where such real or personal property may be situated, in the manner provided by law for the listing and valuation of real and personal property.

SECTION 5840. *Railroad assessment—time of.*—The board on the first Monday of May of each year shall proceed to ascertain all property of any railroad company owning, operating or controlling any railroad or railroad service in this state, which for the purpose of assessment and taxation, shall be held to include the main track, side track, spur tracks, warehouse tracks, roadbed, right-of-way and depot grounds, and all water and fuel stations, buildings and superstructures thereon, and all machinery, rolling-stock, telegraph lines and instruments connected therewith, all material on hand and supplies provided for operating and carrying on the business of such road, in whole or in part, together with franchises and all other property of such railroad company used or held for the purpose of operating its road, and appraise and assess the same as personal property as herein provided.

SECTION 5841. *Annual statement to board by railroad.* —On or before the fifteenth day of April in each year, the person, company or corporation owning, operating or controlling any railroad or railroad service in this state, shall, by its president, secretary or principal accounting officer, return to the State Board of Equalization and Assessment a sworn statement or schedule of the property of such company on the thirty-first day of March preceding, as follows:

(1) Of the right-of-way, track and roadbed, giving the entire length of the main track in this and other states, and showing as to this state the portion in each governmental subdivision;

(2) The length of each side or second track and turnout, spur and warehouse track and aggregate length of such side or second track, turn-out, spur and warehouse tracks, together with the name of the governmental subdivision in which such side or second track and turn-outs, spur and warehouse tracks are located;

(3) A complete list giving size, location as to governmental subdivision, material and value of all depots, station houses, machine shops, stockyards, scales or other buildings situated wholly or in part on the right-of-way, together with all platforms, fuel and water stations, and the machinery and tanks connected therewith.

(4) Showing the number of ties in track per mile, the weight of iron or steel rails per yard, used in the main or side track; what joints or chairs are used in track, kind of ballasting; length of time iron or steel has been used, and what length of time the road has been built;

(5) A full list of the rolling stock belonging to or operated by such road, which shall distinctly set forth the number, class and value of all locomotives, passenger cars, dining cars, express cars, mail cars, baggage cars, grain cars, box cars, horse cars, cattle cars, coal cars, flat cars, wrecking cars, pay cars, and all other kinds of cars, owned or used by such company, whether within or without the State of Nebraska, together with a statement of the number of miles traveled by each of the classes of cars over the line of such company within the State of Nebraska and without the State of Nebraska, separately, during the year preceding the first day of January last past;

(6) A statement or schedule showing: (1) The amount of capital stock authorized, and the number of shares into which said capital stock is divided; (2) The amount of capital stock paid up; (3) The market value of such stock, or if of no market value, then the true value of the shares of stock; (4) The total amount of all secured and unsecured indebtedness, except for current expenses of operating the road; (5) The location and actual valuation of all its real estate and personal property in this state that is locally assessed. Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the State Board of Equalization and Assessment, which values shall be taken into account and be considered in arriving at the true value of such railroad property and its franchises;

(7) A correct return of the value of all tools and materials used for repairs, and of all other personal property in the State of Nebraska, together with such other information as the State Board of Equalization and As-

sessment may require in order to enable them to apportion such rolling stock between the main line and branches of the road;

(8) A true statement of all bridges, showing where located as to governmental subdivisions, the true value thereof, kind and material, the length, width and height of such structure;

(9) The total gross earnings and net earnings of said corporation during the year for which said statement is made, and the total amount expended in the operation and maintenance of the property and the improvements thereof, distinguishing that expended in improvement or betterment from that expended in maintenance and operation; also the dividend last declared upon its shares and the amount thereof, and the date, number and the amount of all dividends declared upon its stock during the year next preceding the date of such report, and such other information as the State Board may in writing require, all of which shall be taken into consideration in ascertaining and fixing the value of such road and the franchise thereof, together with such other information as the State Board may require in relation thereto.

SECTION 5842. The returns of railroad companies or corporations shall not be held to be conclusive as to the value of the property, but the State Board of Equalization and Assessment shall, from all the information which it is able to obtain, including records of the Railway Commission or other regulatory body, find the true value of all such property, including tangible property and franchises, and shall assess the same on the same basis as other property is hereby required to be assessed. The valuation of each mile shall be determined by dividing the whole value by the number of miles of the main track of each road or line.

SECTION 5845. *Power to require attendance before board—penalty.*—The State Board of Equalization and Assessment shall have power to require the attendance before it of any officer, agent or servant of any railroad or railway company having any portion of its property in this state, to answer under oath such questions touching said property as may be propounded by the Board. The Board shall have power to issue whatever notice or process may be necessary to compel the attendance

of any such person as a witness, which process may be served by any person deputed by the Board for that purpose. Any person who shall fail to respond to such process, or who shall refuse to answer any proper question put to him by the Board, shall forfeit the sum of five hundred dollars, to be recovered in a civil action prosecuted in the name of the state.

SECTION 5847. *Board returns to county clerk—trackage.*—The State Board of Equalization and Assessment, after having valued and assessed all the railroad property in this state in accordance with the provisions of this article, shall immediately make return to the County Clerk of each and every county in which any portion of the railroad property as designated in this article may be located, to be used as the basis of levy for the county and governmental subdivisions through which any railroad or part thereof may extend.

SECTION 5848. *Contents of return.*—Such return shall include the following:

(1) Number of miles of track of each railroad located in each governmental subdivision in the county, and the total length of such road in the county;

(2) The average valuation per mile of such road;

(3) The valuation that shall be placed to the credit of such governmental subdivision in the county.

SECTION 5849. *Board returns to county clerk—real property.*—The State Board shall transmit to each county, as soon as practicable after receiving returns from the railroad company, a statement from such returns showing as to each county and railroad all machine and repair shops, general office buildings, storehouses, and also all real and personal property outside of such railroad right-of-way, and depot grounds, not included in the property herein required to be assessed by the State Board of Equalization and Assessment, and in what governmental subdivisions located, which return shall be for the benefit of the county board and local assessors.

SECTION 5850. *Apportionment.*—Railroad property assessed by the State Board shall be apportioned by the County Clerk among the respective governmental

subdivisions in which the same may be entered on the tax list and collected by the County Treasurer.

ARTICLE VI.

SECTION 5883. *Limitations of article.*—This article shall not apply to, nor in any manner affect, the assessment, equalization, levy or collection of any state, county, township, school district or road district tax, nor shall it affect any assessments or levies heretofore made upon any property in the State of Nebraska. Nor shall this article be construed to affect any specific tax which may now or which shall hereafter be provided for by law, upon the property or business of any company or association within this state.

ARTICLE XVI.

SECTION 5971. *Board—clerk.*—The county board, the county assessor and county clerk shall constitute the County Board of Equalization and the county clerk shall be the clerk of said board.

SECTION 5972. *Sessions—duties.*—The county board shall hold a session of not less than three and not more than twenty days, for the purpose contemplated in this section, commencing on the first Tuesday after the second Monday of June each year and shall:

First—Fairly and impartially equalize the valuation of the personal property of the county, and to that end shall, on the application of any person who shall deem himself aggrieved, or who shall complain that another is assessed too low, review the assessment and correct the same as shall appear to be just.

Second—At its meeting in 1912 and every second year thereafter equalize the valuation of real property of the county by raising the valuation of such tracts and lots as are assessed too low, and lowering the valuation of such tracts and lots as are assessed too high; but in cases of evident error of assessment or of apparent gross injustice in overvaluation or undervaluation of real property, the county board of equalization may at its annual meetings consider and correct the same by raising, after due notice has been given to the interested party or parties, or by lowering the assessed valuation of such real property. In cases where farm lands or

real property consisting of city, town, or village blocks or lots have been assessed as entities and after time of such assessment part or parts of such entities have been transferred by the owner or owners thereof to another party or to other parties by sale or otherwise, then the county board may at such annual meeting as board of equalization apportion the just and equitable proportion of the assessed valuation of such entities to the various parcels of lands into which such entities have by transfer of title been divided, upon notice given to the parties of such transfer.

Third—Ascertain whether the valuation of one township, precinct or district bears just relation to all townships, precincts or districts in the county; and may increase or diminish the aggregate valuation of property in any township, precinct or district, by adding or deducting such sum upon the hundred as may be necessary to produce a just relation between all the valuations of the property in the county. It may consider lands, village or city lots and personal property and different classes of personal property, except property assessed or valued by the state board of equalization and assessment, separately, and determine a separate rate per cent of addition or reduction for each of the classes of property as may be necessary to adjust the equalization thereof.

Fourth—Adjust assessments for the county by raising or lowering the assessment of any person as to any or all items of his assessment in such manner as to secure the listing of property at its actual value and the assessment of property at its taxable value; but in no case shall the assessment of any person be raised by the board until such person or his agent shall be previously notified, if such person or his agent be found in the county.

Fifth—Also add to the assessment rolls any taxable property not included therein, assessing the same in the name of the owners thereof as the assessor should have done, but no personal property shall be so added unless the owner thereof is previously notified, if he be found in the county.

Section 5975. *Appeals.*—Appeals may be taken from any action of the county board of equalization to the district court within twenty days after its adjournment,

in the same manner as appeals are now taken from the action of the county board in the allowance or disallowance of claims against the county. No appeal shall in any manner suspend the collection of any tax, or the duties of officers relating thereto, during the pendency of the same, and all taxes affected thereby, which may be collected, shall be kept by the treasurer in a special fund without distribution. The court shall hear the appeal as in equity and without a jury, and determine anew all questions raised before the board which relate to the liability of the property to assessment or the amount thereof, and any decision rendered therein shall be certified by the clerk of the court to the county clerk, who shall correct the assessment books in his office accordingly. If the tax books have been delivered to the treasurer of the county for the collection of such tax before the determination of such appeal in the district court, a copy of such decision shall be certified to the treasurer of the county, who shall thereupon distribute or return such tax so held, in accordance with such decision, and the treasurer shall correct his record to conform to such decision, unless a further appeal be taken to the supreme court, in which case the treasurer shall hold said tax until the final determination of the appeal in that court.

SECTION 5977. *Abstract prepared by assessor.*—The county assessor, immediately after the board of equalization shall have completed its labors, shall prepare an abstract of the assessment rolls of his county on blanks to be furnished by the state board (the values to be given shall be equalized and corrected by the county board), and forward it to the state board of equalization and assessment on or before the tenth day of July. Such abstract shall contain: The total number of acres of taxable land in the county under cultivation; the total number of acres of taxable land not under cultivation; the total number of acres of taxable land in the county; the aggregate actual value of all taxable lands; the aggregate assessed value of all taxable lands; the average actual value per acre of all taxable lands; the average assessed value per acre of all taxable lands; the number of improved town lots; the number of unimproved town lots; the average actual value of each town lot; the aggregate actual and assessed value of all town lots; the aggregate value of all personal property; the total value of all taxable property.

	Number.	Assessed Value.
Number of horses	.....	.....
Number of cattle	.....	.....
Number of mules and asses	.....	.....
Number of sheep	.....	.....
Number of hogs	.....	.....
Number of goats	.....	.....
Number of farm implements	.....	.....
Number of wagons	.....	.....
Number of pleasure carriages, every description	.....	.....
Number of gold watches	.....	.....
Number of silver watches	.....	.....
Plate and jewelry	.....	.....
Number of pianofortes	.....	.....
Other musical instruments	.....	.....
Interest on bonds of the United States, amount	.....	.....
Bonds and interest on bonds of any state, county, district or municipality, value	.....	.....
Other bonds not exempt from taxation, value	.....	.....
Stock in any company or corporation, value	.....	.....
Shares in national bank, amount	.....	.....
Stocks in any company or corporation, value	.....	.....
Moneys, amount	.....	.....
Credits, value	.....	.....
Value of merchant's stock	.....	.....
Value of merchant's moneys and credits	.....	.....
Value of manufacturer's stock	.....	.....
Moneys and credits of manufacturers	.....	.....
Shares of interest in any vessel or boat	.....	.....
Tax sale certificates	.....	.....
Judgments	.....	.....
Notes secured	.....	.....
Notes unsecured	.....	.....
Mortgages securing obligations, other than notes	.....	.....
Aggregate value of all other personal property	.....	.....

SECTION 5979. County board of equalization shall adjourn from time to time until the action of the State Board of Equalization and Assessment shall have been had and certified to the county clerk, and, on the last day of sitting as a board of equalization, the county board shall levy all the necessary taxes for the current year.

SECTION 5984. *Tax list—when delivered—warrant for collection.*—The tax list shall be completed and delivered to the county treasurer on or before the first day of November annually, and before its delivery the county clerk shall attach a warrant under the seal of the county, which warrant shall be signed by the clerk and shall in general terms command the treasurer to collect the taxes therein mentioned according to law; but no informality therein, and no delay in delivering the same after the time above specified, shall affect the validity of any taxes or sales, or other proceedings for the collection of taxes as provided for in this chapter. Whenever it shall be discovered that the warrant in this section provided for was not at the proper time attached to any tax list, for any preceding year or years, in the hands of the county treasurer, the county clerk shall forthwith attach such warrant, which shall be in the same form, and shall have the same force and effect as if it had been attached to such tax list before the delivery thereof to the county treasurer.

SECTION 6011. *Distress warrants—service—return.*—All distress warrants issued by the treasurer for the collection of taxes shall be served by the sheriff of the county in the same manner as process issued by the district court and he shall make returns of the same to the treasurer of the county within sixty days from the date of issue, with an indorsement thereon showing that the taxes therein described have been collected or that, upon diligent search, no property could be found whereof to collect the same. For making a false return the officer shall be liable for double the amount of taxes, with interest and costs, to be recovered in the name of the county.

SECTION 6015. *Distress warrants—sale.*—When any goods and chattels have been taken on any distress warrants, they shall be returned to the owner by the officer having distrained them immediately upon payment of

the taxes due with interest and costs, but upon such owner's refusal or neglect to make such payment, or to give a good and sufficient bond for the delivery of the goods and chattels, the officer distraining shall keep them at the expense of the owner and shall give notice of the time and place of their sale within five days after the taking, in the same manner as upon execution in justice court; and the time of sale shall not be more than twenty days from the day of taking, but he may adjourn the sale from time to time not exceeding five days in all. In case of adjournment he shall put up a notice thereof at the place of sale. Any surplus remaining above the taxes, charges of the keeping and fees for sale, shall be returned to the owner, and the treasurer shall on demand render an account in writing of the sale and charges.

SECTION 6017. *Corporate taxes delinquent.*—When any corporation doing business in this state shall fail or neglect to pay any tax assessed or charged against it, when the same shall have become delinquent, the county treasurer shall notify any agent or officer of the company in the county where such tax is delinquent that the same is delinquent, and the amount due and shall further notify the officer or agent to pay over all moneys that may be in his hands, or that may afterwards come into his hands, belonging to such corporation, not exceeding the amount of tax due, to such county treasurer; and if such agent or officer shall fail to pay over the money to the county treasurer, he shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars, nor more than five hundred dollars.

FEB 29 1924
WM. R. STANSBURY
CLERK

Number 219.

IN THE

SUPREME COURT

OF THE

UNITED STATES

COMPANY, APPELLANT.

October Term, 1923.

CHICAGO, BURLINGTON & QUINCY RAILROAD

V.

W. H. OSBORNE, JR., AS TAX COMMISSIONER OF THE STATE OF NEBRASKA, GILBERT E. HAASE, AS COUNTY TREASURER, BUFFALO COUNTY, NEBRASKA, ET. AL., APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR DISTRICT OF NEBRASKA

BRIEF OF APPELLEES.

O. S. SPILLMAN, Attorney General of Nebraska.
GEO. W. AYRES, Asst. Atty. Gen'l of Nebraska.
HUGH LAMASTER, Asst. Atty. Gen'l of Nebraska.
Solicitors for Appellees.

WEKESSER-BRINKMAN CO., Law Briefs, Lincoln, Neb.

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October Term, 1923.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, APPELLANT.

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W. H. OSBORNE, JR., AS TAX COMMISSIONER OF THE STATE OF NEBRASKA, GILBERT E. HAASE, AS COUNTY TREASURER, BUFFALO COUNTY, NEBRASKA, ET. AL., APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR DISTRICT OF NEBRASKA

BRIEF OF APPELLEES.

O. S. SPILLMAN, Attorney General of Nebraska.
GEO. W. AYRES, Asst. Atty. Gen'l of Nebraska.
HUGH LAMASTER, Asst. Atty. Gen'l of Nebraska.
Solicitors for Appellees.

STATEMENT.

This is a direct appeal from the United States District Court, District of Nebraska, constituted under section 266

of the Code, with three judges, in which the plaintiff sought an interlocutory injunction against W. H. Osborne, Jr., as tax commissioner of the State of Nebraska, and the treasurers of seventy-two counties of the state, to restrain the enforcement of taxes assessed and levied against it by the State of Nebraska through its board of equalization and assessment. The defendants, (except two) moved to dismiss (Tr. 35), and upon the application for an interlocutory order objected to jurisdiction on the ground that the plaintiff had a plain, adequate and complete remedy at law, for its protection against the alleged wrongs charged in the petition, by means of an error proceeding from the state board of equalization and assessment to the Supreme Court of the State of Nebraska.

Insufficiency of fact to constitute a valid cause of action was also stated in the motion.

All defendants are now represented by the attorney general.

The respective parties produced their evidence. The court entered the following order (Tr. 47):

> "Now on this 10th day of January, A. D., 1923, this cause having heretofore been taken under advisement by the court on plaintiff's application for a temporary injunction the court being well advised in the premises, doth find;
>
> "That plaintiff for the redress of the wrongs recited in its petition had an adequate remedy at law under the statutes of the state of Nebraska in prosecuting error proceedings to the Supreme Court of the State of Nebraska, and for that reason there is no equity in the application for a temporary injunction.
>
> "It is therefore considered by the court that plaintiff's application for temporary injunction be and hereby is denied.
>
> "To all and singular the findings and judgment of

the court plaintiff excepts and its exceptions are hereby allowed. By the court: Robt. E. Lewis, Circuit Judge. Thos. C. Munger, District Judge. J. W. Woodrough, District Judge."

Thereafter the plaintiff moved for a re-hearing (Tr. 47), which was denied (Tr. 48).

Diversity of citizenship is alleged, the amount in controversy is more than $3000 as to each defendant, except seven. In seven counties the amount of taxes involved is less than that sum (Tr. 73, 74). The gravamen of the complaint is that appellant's property was intentionally and wrongfully over-assessed (Tr. 29), while other property was intentionally and wrongfully under-assessed (Tr. 27, 28). The defendants insisted throughout the hearing that there was a plain adequate and complete remedy at law by way of an error proceeding from the state board of equalization and assessment to the Supreme Court of Nebraska; that there be being such a remedy the Federal courts, under the principles of equity administered by such courts, would decline jurisdiction; that the Federal courts would not act until the procedure provided by the laws of the state had been followed to a conclusion.

A full hearing was had before the State Board of Equalization and Assessment (Tr. 106-142) on the complaint of appellant against its assessment for 1922. The complaint was dismissed August 2, 1922 (Tr. 142). The petition in equity was filed November 22, 1922 (Tr. 4). No error proceeding to the Supreme Court of Nebraska was prosecuted.

BRIEF OF ARGUMENT.

I. Method of Taxation of Railroad Properties in Nebraska.

Property generally in Nebraska is assessed by precinct assessors under the direction of county assessors. Railroad property is assessed by the state board of equalization and assessment. The method of assessing railroad property is governed principally by these sections of the compiled statutes of Nebraska, for 1922: 5898, 5820, 5904, 5905, 5839, 5840, 5841, 5842, 5844, 5847, 5848, 5849, 5850, 5901, 6010 and 6017.

Other sections cover other phases of the subject not material to this case. (All references herein are to the compiled statutes of Nebraska for 1922).

The sections named are as follows:

> 5898. The Governor, Secretary of State, State Auditor, State Treasurer and Tax Commissioner are hereby constituted the State Board of Equalization and Assessment. The Tax Commissioner shall be secretary of said board, and as such perform such duties as may devolve on him by law or the rules and regulations of the board. He shall have authority to administer oaths and affirmations and to call special meetings of the board at such times as its business may require.
>
> 5820. All property in this state, not expressly exempt therefrom, shall be subject to taxation, and shall be valued and assessed at its actual value. "Actual value," as used in this Act, shall mean its value in the market in the ordinary course of trade.
>
> 5904. The State Board shall determine the amount of all taxes required for state purpose, and the rate of taxation upon all tangible property in the state necessary to raise the same, and make a levy of such taxes throughout the state. The rate of the general state tax on tangible property together with the state tax on

intangible property shall be sufficient to realize the amount necessary to meet appropriations made by the legislature for the year in which the tax is levied, and an additional sum not exceeding twenty per cent of the amount of any existing state indebtedness.

5905. On or before the second day of August in each year the State Board shall transmit to the county clerk of each county a statement of the rate of taxation required for the general state tax, the state school tax and any other general or special taxes, as directed to be levied and collected by the State Board.

5839. The State Board of Equalization and Assessment is hereby empowered, and it is made its duty, to assess all property of the railroads and railroad corporations in the State of Nebraska; Provided, however, that all machine repair shops, general office buildings, store houses, and also all real and personal property outside of right-of-way and depot grounds, as of and belonging to any such railroad and telegraph companies, shall be listed for purposes of taxation by the principal officers or agents of such companies with the assessors of any precinct of the county where such real or personal property may be situated, in the manner provided by law for the listing and valuation of real and personal property.

5840. The Board on the first Monday of May of each year shall proceed to ascertain all property of any railroad company, owning, operating or controlling any railroad or railroad service in this state, which for the purpose of assessment and taxation, shall be held to include the main track, side track, spur tracks, warehouse tracks, roadbed, right-of-way and depot grounds, and all water and fuel stations, buildings and superstructures thereon, and all machinery, rolling-stock, telegraph lines and instruments connected therewith, all material on hand and supplies provided for operating and carrying on the business of such road, in whole or in part, together with franchises and all other property of such railroad company used or held for the

purpose of operating its road, and appraise and assess the same as personal property as herein provided.

5841. On or before the fifteenth day of April in each year, the person, company or corporation owning, operating or controlling any railroad or railroad service in this state, shall, by its president, secretary or principal accounting officer, return to the State Board of Equalization and Assessment a sworn statement or schedule of the property of such company on the thirty-first day of March preceding, as follows:

(1) Of the right-of-way, track and roadbed, giving the entire length of the main track in this and other states, and showing as to this state the portion in each governmental subdivision;

(2) The length of each side or second track and turn-out, spur and warehouse track and aggregate length of such side or second track, turn-out, spur and warehouse tracks, together with the name of the governmental subdivision in which such side or second track and turn-outs, spur and warehouse tracks are located;

(3) A complete list giving size, location as to governmental subdivision, material and value of all depots, station houses, machine shops, stockyards, scales or other buildings situated wholly or in part on the right-of-way, together with all platforms, fuel and water stations, and the machinery and tanks connected therewith.

(4) Showing the number of ties in track per mile, the weight of iron or steel rails per yard, used in the main or side track; what joints or chairs are used in track, kind of ballasting; length of time iron or steel has been used, and what length of time the road has been built;

(5) A full list of the rolling stock belonging to or operated by such road, which shall distinctly set forth the number, class and value of all locomotives, passenger cars, dining cars, express cars, mail cars, baggage cars, grain cars, box cars, horse cars, cattle cars, coal cars, flat cars, wrecking cars, pay cars and all other kinds

of cars owned or used by such company, whether within or without the State of Nebraska, together with a statement of the number of miles traveled by each of the classes of cars over the line of such company within the State of Nebraska and without the State of Nebraska, separately, during the year preceding the first day of January last past;

(6) A statement or schedule showing: (1) The amount of capital stock authorized, and the number of shares into which said capital stock is divided; (2) The amount of capital stock paid up; (3) The market value of such stock, or if of no market value, then the true value of the shares of stock; (4) The total amount of all secured and unsecured indebtedness, except for current expenses of operating the road; (5) The location and actual valuation of all its real estate and personal property in this state that is locally assessed. Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the State Board of Equalization and Assessment, which values shall be taken into account and be considered in arriving at the true value of such railroad property and its franchises;

(7) A correct return of the value of all tools and materials used for repairs, and of all other personal property in the State of Nebraska, together with such other information as the State Board of Equalization and Assessment may require in order to enable them to apportion such rolling stock between the main line and branches of the road;

(8) A true statement of all bridges, showing where located as to governmental subdivisions, the true value thereof, kind and material, the length, width and height of such structure;

(9) The total gross earnings and net earnings of said corporation during the year for which said statement is made, and the total amount expended in the operation and maintenance of the property and the improvements thereof, distinguishing that expended in improvement or betterment from that expended in maintenance and operation; also the dividend last declared

upon its shares and the amount thereof, and the date, number and the amount of all dividends declared upon its stock during the year next preceding the date of such report, and such other information as the State Board may in writing require, all of which shall be taken into consideration in ascertaining and fixing the value of such road and the franchise thereof, together with such other information as the State Board may require in relation thereto.

5842. The returns of railroad companies or corporations shall not be held to be conclusive as to the value of the property, but the State Board of Equalization and Assessment shall, from all the information which it is able to obtain, including records of the Railway Commission or other regulatory body, find the true value of all such property, including tangible property and franchises, and shall assess the same on the same basis as other property is hereby required to be assessed. The valuation of each mile shall be determined by dividing the whole value by the number of miles of the main track of each road or line.

5844. Any railroad company operating any road within the State of Nebraska shall annually, on or before the first day of April, report to the County Clerk of each county through which its line of road runs the number of miles of main track situated within each governmental subdivision in the county, together with all machine and repair shops, general office buildings, store houses, and all real and personal property not on the right-of-way.

5847. The State Board of Equalization and Assessment, after having valued and assessed all the railroad property in this state in accordance with the provisions of this article, shall immediately make return to the County Clerk of each and every county in which any portion of the railroad property as designated in this article may be located, to be used as the basis of levy for the county and governmental subdivisions through which any railroad or part thereof may extend.

5848. Such return shall include the following:

(1) Number of miles of track of each railroad located in each governmental subdivision in the county, and the total length of such road in the county;

(2) The average valuation per mile of such road;

(3) The valuations that shall be placed to the credit of such governmental subdivision in the county.

5849. The State Board shall transmit to each county, as soon as practicable after receiving returns from the railroad company, a statement from such returns showing as to each county and railroad all machine and repair shops, general office buildings, store houses, and also all real and personal property outside of such railroad right-of-way, and depot grounds, not included in the property herein required to be assessed by the State Board of Equalization and Assessment, and in what governmental subdivision located, which return shall be for the benefit of the county board and local assessors.

5850. Railroad property assessed by the State Board shall be apportioned by the County Clerk among the respective governmental subdivisions in which the same may be entered on the tax list and collected by the County Treasurer.

5901. The State Board of Equalization and Assessment shall, on the first Monday of July of each year, meet at the state capitol for the purpose of equalizing assessments. They shall proceed to examine the abstracts of property assessed for taxation in the several counties of the state, including the railroads entirely within such county, and all other property, and shall equalize such assessments so as to make the same conform to law, and for that purpose they shall have the power to increase or decrease the assessed valuation of any county or tax district, and such increase or decrease shall be made by a percentum, and the per cent of increase or decrease when made shall be certified to the county clerk of the proper county, who shall thereupon add to or deduct from the assessment of each piece or parcel of property in the county affected an amount equal to the per cent of increase or decrease

fixed by the State Board. The State Board shall have the power, in equalizing assessments, to increase or decrease the assessed valuation of any class, classes or kinds of property in any county or tax district, whenever in their judgment it shall be necessary to make such assessment conform to law; and such increase or decrease, when made, shall be certified to the county clerk and by the county clerk extended upon the tax rolls as hereinbefore provided; but in the extension of valuations the county clerk shall reject all such amounts as may fall below two dollars and fifty cents, and all amounts of two dollars and fifty cents or more shall be extended as the next higher five dollars or multiple thereof, this making all valuations end in cipher or five. In the event it shall appear to the State Board of Equalization and Assessment that a just, equitable and legal assessment of the property in the state cannot be made without increasing or decreasing the valuation as returned by any county, the Board of Equalization and Assessment shall issue a notice to the counties which the Board deems either under-valued or over-valued and shall set a date for hearing at least five days following the mailing of such notice. At such hearing legal representatives of the counties may appear and show cause why the valuation or valuations of their county should not be increased or decreased by the State Board, and after a full hearing, the State Board shall enter its order and certify the same to the county clerks of the proper counties as hereinbefore set forth in this section. The notice provided for in this section shall be mailed to the county clerk, county assessor, and chairman of the county board. From any final decision of the State Board of Equalization and Assessment, any person, county or municipality affected thereby may prosecute a writ of error to the Supreme Court and upon demand therefor the State Board shall prepare and certify a transcript of its records and proceedings involved in such decision, upon payment by the party demanding the same of a fee of ten cents for each one hundred words. Notice of intention to obtain a review shall be filed within ten days from the date

of the entry by the Board, and when docketed said cause shall be given precedence by the Supreme Court over all civil cases.

6016. The county treasurer is hereby required, during the month of December of each year after the personal taxes for the year have become delinquent, to notify by mail all persons of the amount of their delinquent personal tax, and that unless the same is paid by February first next following, distress warrant will be issued therefor. The treasurer shall, on and after the first day of February next after the personal taxes for the last preceding year have become delinquent, collect the same, together with interest and costs of collection, by distress and sale of personal property belonging to the person against whom levied in the manner provided by law for the levy and sale of personal property on execution. Distress warrants shall be issued against all persons having delinquent personal tax for each year, and each such warrant shall include all delinquent personal taxes of the person against whom issued, unless such person shall, on or before February 1st, file with the treasurer an affidavit that he is unable, by reason of poverty, to pay any such tax, in which case distress warrants shall not issue until ordered by the county board.

6017. When any corporation doing business in this state shall fail or neglect to pay any tax assessed or charged against it, when the same shall have become delinquent, the county treasurer shall notify any agent or officer of the company in the county where such tax is delinquent that the same is delinquent, and the amount due, and shall further notify the officer or agent to pay over all moneys that may be in his hands, or that may afterwards come into his hands, belonging to such corporation, not exceeding the amount of tax due, to such county treasurer; and if such agent or officer shall fail to pay over the money to the county treasurer, he shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars, nor more than five hundred dollars.

II. Summary of Laws Relating to Taxation of Railroads.

Briefly summarized the important features of the foregoing sections of the statute may be stated thus: They provide that the state board of equalization and assessment, consisting of the governor and four other state officers, shall determine the rate of taxation that will be sufficient to realize the amount necessary to meet appropriations made by the legislature for the year in which the tax is levied, with an additional sum to apply on existing indebtedness. In order to enable the board to ascertain the value of railroad property, the railroads are required to furnish annual statements showing the kinds and amounts of property they own and showing their financial conditions. Upon the information furnished by the railroads and from other information obtained by the board it fixes the value of railroad property. If any railroad company be dissatisfied with the valuation fixed by the board of equalization and assessment, it has a plain, adequate and complete remedy by means of an error proceeding to the supreme court of the state.

Properties not immediately connected with the right-of-way and terminal property are assessed by the local assessors. Taxes on such forms of property are not involved in this suit. Appellant offered to pay all city and village taxes in full (Tr. 32).

Section 5823 provides for lien as follows:

> "Taxes assessed upon personal property shall be a first lien upon the personal property of the person to whom assessed from and after the first day of November of the year in which they are assessed, until paid."

As railroads are assessessed as personal property, the lien for taxes attaches on November 1st of the year in which assessed. Interest is charged on such taxes after December 1, as provided in section 6002, which is, in part, as follows:

"On the first day of December of the year in which taxes shall have been assessed, all unpaid personal taxes, except in cities authorized by law to levy and collect their own taxes shall become delinquent and shall draw thereafter ten per cent per annum, which interest shall be collected the same as tax so due."

Distress warrants for the collection of personal taxes are issuable by county treasurers on February 1st of the year succeeding the year in which the taxes are levied.

In the present case there is no controversy as to rate of taxation; it relates entirely to valuation of the property.

III. Valuation of Property for Taxation a Judicial Function.

On page 13 of appellant's brief, it is said:

"The valuation and assessment of appellant's property for taxation is not a judicial function; it is legislative."

The words "levy" and "assessment" are used with various meanings. They are used here with the same meanings as in the Nebraska statutes. Under paragraph 10 of article 6 of the revenue law, section 5861, the word assess is defined as follows:

"The term 'assess,' as used in this article, shall include within its meaning valuation of property for the purpose of taxation."

The term "levy," as it is used in section 5904, above quoted, refers to the amount of all taxes required for state purposes and the rate of taxation to meet the amount appropriated by the legislature. It does not refer to the making of a valuation. It is also provided, by section 5979, that after equalization has been had, county boards shall levy the necessary taxes for the current year. This is after valuation and equalization are completed. Section 5979 is, in part, as follows:

"The county board of equalization shall adjourn from time to time until the action of the state board of equalization and assessment shall have been had and certified

to the county clerk, and, on the last day of sitting as a board of equalization, the county board shall levy the necessary taxes for the current year, including all county, township, city, school district, precinct, village, road district and other taxes required by law to be certified to the county clerk and levied by the county board: Provided, any such taxes regularly voted and certified to the county clerk, after the county board shall have made such levy and before the county clerk shall have completed the tax list, shall be levied by the county clerk, if within the limit of the law, and extended upon the tax list the same as if levied by the county board."

Taxation according to value requires three processes: Listing of property, valuation of property and fixation of the rate of taxation. The processes are separate and distinct and involve different functions. In Nebraska appropriations by the legislature precede the assessment and the levy of taxes. The determination of the amount that must be raised by taxation is legislative but the actual valuation of property as a basis for the levying of taxes is judicial in its nature. It is usually said that valuing or assessing officers act quasi-judicially. Appellant has laid down a false premise in saying that valuation of property for taxation is a legislative function. Valuation is a judicial function:

Cooley on Taxation, 3d Edition, p. 751.

In *Slaughter* v. *City of Louisville*, 89 Ky. 112, its it said (121):

"It is well settled that the valuation of property, for the purpose of *ad valorem* taxation, is, in its character a judicial act."

In *State ex rel. Goff* v. *County Board of Dodge County*, 20 Neb. 595, the court said, (p. 599):

"It will thus be seen that the assessor is to fix the actual assessable value of the taxable property named in his territory. In fixing such values, he acts judicially.

Cooley on Taxation, p. 550, *et seq.*, and cases cited. His assessment, therefore, becomes final—as much so as a judgment of a court upon a subject where it has jurisdiction, unless reviewed in the mode provided by law. The assessor is required to ascertain the value of each tract of land assessed by him, not by hearsay, not by calling witnesses, but by actually viewing the land itself. The evident object of the statute is to enable the assessor to fix the true value of the land, and in the absence of any proof upon the subject the presumption is that he has done his duty.

In *Dixon County* v. *Halstead*, 23 Neb. 697, the court said (p. 701):

> "Where property has been duly assessed, the owner may rest securely upon the valuation so fixed, until a case is established authorizing an addition to the assessed valuation of such property. The assessor acts in a judicial capacity in making an assessment of property. The law presumes that he will do his duty faithfully, fearlessly, and impartially; therefore, to authorize the board of equalization to increase the assessment of an individual, a complaint must be made and testimony taken upon the same, authorizing such increase. Otherwise the board will have no power."

In *State* v. *Savage*, 65 Neb. 714, the Supreme Court of the state said (p. 770):

> "The state board of equalization, it must be admitted, is an administrative body, clothed with quasi-judicial powers in regard to the assessment of property it is by law required to value and assess. It has the right to exercise a fair discretion in expressing its judgment as to the valuation of such property; and when it has once acted, and there is no fraud shown, its judgment cannot be controlled by the writ of mandamus."

In *State* v. *State Board of Equalization and Assessment*, 81 Neb. 139, the language in *State* v. *Savage*, *supra*, that the

state board of equalization and assessment is clothed with quasi-judicial powers as to the valuation of railway property, was quoted approvingly (143).

In *Hacker* v. *Howe*, 72 Neb. 385, the court said (p. 393):

> "The actions not only of the county assessor in fixing the valuation in the first instance, but also that of the county board of equalization and of the state board of equalization in equalizing as between different counties, are in their nature quasi judicial."

The court also recognized the doctrine laid down in *State* v. *Savage, supra,* that in assessing property the state board of equalization is clothed with quasi judicial powers.

In *Hagar* v. *Reclamation District*, 111 U. S. 701, this court considered the functions of assessing property and said (710):

> "But where a tax is levied on property not specifically, but according to its value, to be ascertained by assessors appointed for that purpose upon such evidence as they may obtain, a different principle comes in. The officers in estimating the value act judicially; and in most of the states provision is made for the correction of errors committed by them, through boards of revision or equalization, sitting at designated periods provided by law to hear complaints respecting the justice of the assessments."

IV. The Action of the Board in Assessing Railroad Property is a Final Order.

In *Sioux City & Pacific R. Co.* v. *Washington County*, 3 Neb. 30, it was held that the action of the county board in raising the assessment of plaintiff's property was a final order.

In *State* v. *State Board of Equalization and Assessment, supra,* it is said (p. 143):

"We also find that we have uniformly held that the action of a taxing board is in its nature a final order, which cannot be attacked collaterally, and can only be reviewed on error or appeal."

V. Valuation, Not Levy, Reviewable.

In *Chapel* v. *Franklin County*, 58 Neb. 544, an action to recover taxes paid under protest alleged to have been based on an excessive assessment, the court said (p. 545-6):

"It also shows that Chapel, being dissatisfied with the action of the town board, presented his grievance to the county board of equalization, where a hearing was had and an order made reducing the assessment from $1,718 to $1,546. This order, never having been reversed, vacated, or modified, fixed conclusively the value of plaintiff's personal estate for the purposes of taxation. Being a judicial order, it might have been reviewed in the district court, but it is not subject to collateral attack."

In *McGee* v. *State*, 32 Neb. 149, it is paid (p. 153):

"The town board in correcting assessments, acts judicially, which action is final and conclusive, unless corrected in the manner provided by law."

In *Whedon* v. *Lancaster County*, 76 Neb. 761, a resident taxpayer appealed from the order of the county board levying taxes on the ground that the taxes were excessive, extravagant, exorbitant, and illegal. The District Court sustained a demurrer to the petition and the Supreme Court of Nebraska affirmed the decision. The court said (p. 763):

"A careful examination of our present revenue law discloses that it contains no provision for an appeal from the order of the county board in making the tax levy. We therefore conclude that it was not the in-

tention of the legislature to allow a taxpayer to appeal from such order.

"An assessment means the determination of the value of a man's property for the purpose of levying a tax; and official listing of persons and property with an estimate of the value of the property of each for purposes of taxation. 3 Cyc. 1111.

"This clearly distinguishes the act of assessment from the order constituting the tax levy. A proper and legal assessment must first be made, and the value of the taxable property of the county must be thus ascertained as a basis for the subsequent act of levying sufficient taxes to conduct the governmental affairs of the state, the county and its several municipalities. So, the statute providing for an appeal from the decision of the board of equalization in certain matters of assessment can have no application whatever to the subsequent action of the county board by which the tax is levied."

"* * * Again, it would seem clear that the legislature never intended to confer jurisdiction upon the courts by appeal to review or control the discretion of the county board in the matter of levying taxes. To grant the district court such powers would, in effect, substitute its discretion for that of the county board, the tribunal to which the statute has specifically committed that duty. So, we are of opinion that the right of appeal to the district court from an order of the county board in making the necessary tax levy under the provisions of Section 137, Art. I, Ch. 77, Comp. St. 1903, does not exist, and therefore that court was without jurisdiction to hear and determine the matters set forth in the appellant's petition."

McCague Inv. Co. v. *Metropolitan W. D.*, 101 Neb. 820.

Beadle v. *Sanders*, 104 Neb. 427, approves the Whedon case.

The case of *Hutchinson, et al.* v. *City of Omaha*, 52 Neb. 345, cited by appellant, was an action in injunction to pre-

vent the collection of local assessments for special improvements by grading certain streets. The court found that the legal proceedings for the improvements were wholly defective, in that there were not sufficient petitioners, the grade was not properly established, there was an improper change of grade and some streets described in the petition were not graded. It said (p. 348):

> "We think this tax was in its inception, in its groundwork, and throughout, absolutely void."

The court held that although the city had the power to perform the work and assess one-half the cost against the plaintiffs it could not require as a condition of relief that they should be adjudged to pay such half. The court declined to act as the assessing agency as that was the duty of the city authorities. It is apparent that the court did not mean that the valuation of property was not a judicial act. The later cases cited above do not refer to *Hutchinson* v. *City of Omaha*, so it is clear that the court does not consider that it has said anything contrary to the course of its holdings, that valuation is a judicial function.

It is not the position of appellees, as seems to be assumed in the brief of appellant, that the Supreme Court of Nebraska has legislative power in matters of taxation, or that it will re-assess the properties of railroad companies. As hereinafter explained, its functions are to determine petitions in error and if it find the decision of the board to be manifestly wrong it will reverse such decision and remand the matter to the board for further proceeding.

Chicago, Rock Island & Pacific Ry. Co. v. *State*, (unreported, decided by Nebraska Supreme Court December 31, 1923). The opinion is reprinted as an appendix to this brief.

Appellant says (Brief, p. 14) that although the board may proceed in a quasi judicial capacity the orders it enters are not judicial. The appellant, it seems, does not correctly apprehend the functions of the board. The board has no discretionary power (except as noted below) as to the amount of money to be raised. It computes the amount from the legislative acts and then simply performs the arithmetical operation of finding what the necessary rate will be. Its only discretionary function in making the levy is as to the amount that will be raised to apply on existing indebtedness. No question involving that power is before the court. The controversy here relates purely to the judicial function involved in valuing appellant's property. Under the statute above quoted (Sec. 5901) an error proceeding may be prosecuted to the Supreme Court from a finding of value.

VI. The Remedy by Writ of Error is Plain, Adequate and Complete.

Attention should be called to the cases decided prior to the case of *The Chicago, Rock Island & Pacific Railway Co.* v. *State, supra*, just decided by the Supreme Court of Nebraska, and to some of the constitutional provisions and certain statutes.

The constitution of Nebraska provides, article 1, section 24,

> "The right to be heard in all civil cases in the court of last resort, by appeal, error or otherwise, shall not be denied."

Section 9127 of the statutes provides:

> "A judgment rendered, or final order made, by a county court, justice of the peace or any other tribunal, board or officer exercising judicial functions, and inferior in jurisdiction to the district court, may be reversed, vacated or modified by the district court."

Section 9128 provides:

"An order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment, and an order affecting a substantial right made in a special proceeding, or upon a summary application in an action after judgment, is a 'final order' which may be vacated, modified or reversed, as provided in this chapter and chapter 19."

Section 9129 provides in part as follows:

"The proceedings to obtain such reversal, vacation or modification, shall be by petition entitled 'petition in error', filed in a court having power to make such reversal, vacation or modification, setting forth the errors complained of, and thereupon a summons shall issue and be served, or publication made, as in the commencement of an action."

Section 9131 provides:

"The plaintiff in error shall file with his petition a transcript of the proceedings containing the final judgment or order sought to be reversed, vacated or modified. No written or printed abstract or any copy of an abstract of the record shall be required in any case in the supreme court of this state."

Section 9132 provides:

"Judges of county courts, justices of the peace and other judicial tribunals having no clerk, and clerks of every court of record, shall, upon request and being paid the lawful fees therefor, furnish an authenticated transcript of the proceedings, containing the judgment or final order of said courts, to either of the parties to the same, or to any person interested in procuring such transcript."

In *Sioux City & Pacific R. Co.* v. *Washington County*, 3 Neb. 30, two cases were determined, the first being an appeal from the decision of the board of county commissioners in

overruling the petition and motion of the railroad to set aside the action of the board increasing its assessment, the county board being then the assessing authority and the other a petition in error to the proceedings of said board covering the same assessment. The district court dismissed the appeal for want of jurisdiction and the petition in error was overruled, judgment being rendered sustaining the board of equalization. Petitions in error were filed in both cases in the Supreme Court. The judgment of the district court in the appeal was affirmed on the ground that an appeal from the decision of the board did not lie, that the decision of the county board was a final order and as such might be reviewed in the district court only upon petition in error. In the error proceeding the Supreme Court held that the county board had no right to increase an assesment without notice to the persons whose rights and interests are affected. The judgment of the district court was, therefore, reversed and the proceedings of the county commissioners vacated and set aside. Thus, full relief was granted to the petitioner in error. In the case of *McGee* v. *State*, 32 Neb. 149, *Sioux City & Pacific R. Co.* v. *Washington County*, *supra*, was approved.

In *State* v. *State Board of Equalization & Assessment*, 81 Neb. 139, which was an original application on the relation of the Union Pacific Railroad Company for a writ of mandamus to compel respondents as a state board of equalization and assessment to convene and make certain records, the court said (pp. 143-144):

> "It is insisted by the respondents, however, that neither appeal nor error will lie from the final action of the board in valuing and assessing railroad property for taxation. We can readily agree with the first part of this contention, for appeal is purely a statutory remedy, and where no provision therefor is made by law the right to pursue that remedy does not exist; but when

we come to consider the question of the relator's right to prosecute error to a court of competent jurisdiction an entirely different rule prevails. By section 580 of the code it is provided 'A judgment rendered, or final order made, by a probate court, justice of the peace, or any other tribunal, board, or officer exercising judicial functions, and inferior in jurisdiction to the district court, may be reversed, vacated or modified by the district court.' It is further provided by sec. 581 of the code: 'An order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment, and an order affecting a substantial right made in a special proceeding, or upon a summary application in an action after judgment, is a final order which may be vacated, modified, or reversed, as provided in this title.'"

Section 580 referred to is the same as section 9127, Compiled Statutes of Nebraska for 1922, quoted above, except that the word "county" is now used. County courts are courts of probate in Nebraska and were formerly so designated.

Formerly there was no statute providing specifically for an error proceeding from the board of equalization and assessment. In 1921 the revenue law was modified and the following provision was added (part of Section 5901):

"From any final decision of the state board of equalization and assessment, any person, county or municipality affected thereby may prosecute a writ of error to the supreme court and upon demand therefor the state board shall prepare and certify a transcript of its records and proceedings involved in such decision, upon payment by the party demanding the same of a fee of ten cents for each one hundred words. Notice of intention to obtain a review shall be filed within ten days from the date of the entry by the board, and when docketed said cause shall be given precedence by the supreme court over all civil cases."

This amendment was considered by the Supreme Court of Nebraska in the case of *The Chicago, Rock Island & Pacific Railway Co.* v. *State, cited supra.* The railway company objected to its 1923 assessment before the board of equalization and assessment. In conjunction with some of the other railroads operating in Nebraska it offered testimony and presented its arguments. This was in accordance with the practice before the state board for a number of years. It offered in evidence the record of the proceedings of the board in 1921 and 1922 (offered in this case as Exhibit 29, transcript pp. 106-140). On error to the Supreme Court it was reversed and remanded.

Under the decision in the Rock Island case it will be seen that there is a plain, adequate and complete remedy at law and that the appellant had no need of resorting to a proceeding in equity to sustain any of its rights. The essential parts of the decision are as follows:

> "This is a proceeding in error under section 5901, Comp. St. 1922, to review the assessment for taxation made by the state board of equalization and assessment of that part of its property and franchises required by law to be assessed by that body. The complainant alleged in its petition for a hearing before the state board that all property in the state other than railroad property has been valued for assessment purposes by the county authorities at not to exceed 50 per cent. of its actual value; that the law provides that the property of complainant be also valued on the same basis as used for the valuation of all other classes of property; that if the tentative assessed valuation of its property be not reduced to the same percentage of actual value as other property, or unless all other property be valued and assessed by increasing the value to the percentage at which the complainant's property has been assessed, complainant would be denied the equal protection of the law, and its property would be taken for public use without just compensation and without

due process of law. It alleges that the tentative assessment of $10,694,409, made on June 15, 1923, is in excess of the actual value of the complainant's property, which does not exceed $5,186,920, and that this valuation should be further equalized with the assessment of other property in the state. The complainant requested that the board either reduce the valuation of its property to the same percentage of actual value as other property, or that it increase the valuation of all classes of property in each county to the same percentage at which the complainant's property has been assessed. Other railroad companies filed similar complaints. A hearing was had and at its conclusion the board adhered to the tentative valuation.

"There was no assessment of real estate required under the statute in 1923. The 1922 assessment remains except for improvements placed upon the land within the tax year of 1922-1923.

(Extensive discussion of the testimony follows).

"If, however, as between two classes of taxpayers, the property of each is assessed at a lower value but at the same proportion of its actual value, there is no ground for complaint on the part of either. But if the property of one is valued at its actual value and that of another at only 68 per cent of its actual value, inequality results and an unjust and unlawful exaction is made. *State* v. *Osborn*, 60 Neb. 415.

"A number of decisions have been cited as to what elements should govern in the valuation of railroad property. There seems to be some conflict as to the proper rule to be adopted, especially with regard to valuation for rate making purposes. We believe, that, in reviewing the action of the board, we must consider only those elements of value, the existence of which rests upon the facts in evidence. We may not act upon mere conjecture or theory, which, though the theory may be sound, can only be apprehended by an explanation made by some witness conversant with the intricacies of railroad accounting. No such explanation

was made. The following methods of valuation are presented by the record. They do not possess all the elements or factors generally required by the courts, but they are all that were before the state board, and, since we are merely reviewing their action, we cannot consider any others.

"From a careful consideration of all the facts in evidence, we are of the opinion that the valuation of the property of complainant lacks reasonable uniformity with the assessment of lands and improvements; that, as the record recites, the railroad property has been assessed at 'full actual value,' and that the other class mentioned has been assessed at a much lower percentage. This being the case, the property of complainant should be revalued as nearly as possible at the same percentage of actual value as all other property.

"Having come to this conclusion, the finding and order of the state board of equalization and assessment of the value of complainant's property is set aside and the proceedings are remanded to that body for further proceeding in accordance with law. While section 5882, Comp. St. 1922, seems to apply specifically to where 'any tax or part thereof levied under the provisions of this article shall be adjudged illegal and nonenforceable, or shall be set aside by any court of competent jurisdiction on any ground whatever,' and specifies what the duty of the board shall be as to reassessing and redetermining the value in such case, the procedure prescribed for such cases seems to be well adapted to such a case as this, where the assessment of the property of the complainant has been decided to lack uniformity with that of other classes of property. We desire in this connection to call special attention to section 5842, Comp. St. 1922, which gives the board power to consider all facts and information not contained in the reports made by the railroad companies. Where such information is considered, the source from which it has been obtained should, so far as possible, be mentioned in the record, so that a reviewing court may consult the same sources and thus stand in the shoes of the assessing body."

The section of the statute 5882, referred to in the decision of the Supreme Court of Nebraska (under Art. 6 relating to equalization by local boards) is as follows:

> "If any tax or part thereof levied under the provisions of this article shall be adjudged illegal and nonenforceable, or shall be set aside by any court of competent jurisdiction on any ground whatever, it shall be the duty of the board, whether any part of the taxes assessed and levied have been paid or not, to forthwith reascertain and redetermine the value of the property of such company or companies, if the same shall be called for by such decision of the court; and, when such reassessment has been made, to make duplicates of the original assessment rolls with their valuations thereon, and return the same to the respective officers of the cities and counties as provided in the fifth next preceding section. Whereupon it shall be the duty of the city and county officers, respectively, to make a new computation and extend new levies of taxes against the company or companies affected by the order of the court, which taxes shall be of the same force and effect as an original assessment and levy made in accordance with law. The proceedings for such reassessment and for the extension and collection of taxes upon such duplicate assessment rolls shall be conducted in the method originally provided, as near as may be. The power is hereby given to reassess the property of any company as often as may be necessary until the amount of taxes legally and justly due from any company for any year have been finally and definitely determined under the provisions of this article. In case relevies shall be made, credit may be given thereon of any amounts paid upon the prior levy."

Thus not only is there a remedy in the Supreme Court for the aggrieved taxpayer, but the procedure to be followed after the Supreme Court has acted is also directed by the decision.

The Rock Island case disposes of the necessity of discussing the effect of *Lincoln Telephone & Telegraph Co.* v. *Johnson County*, 102 Neb. 254, and *Sioux City Bridge Co.* v. *Dakota*

County, 105 Neb. 834. The decision in the Rock Island case is in absolute harmony with the holding of this court in *Sioux City Bridge Co.* v. *Dakota County*, Advance Opinions (L. Ed. No. 7, p. 220, decided January 2, 1923. (It should be noted that the decision in the case of *Sioux City Bridge Co.* v. *Dakota County, supra*, was rendered on January 2, 1923, whereas the order dismissing plaintiff's bill was not entered until January 10, 1923.) The court directs the board, upon reassessment, to make its record so that the reviewing court may consult the same sources and thus stand in the shoes of the assessing body.

The decision in the Rock Island case disposes of the contentions of appellant in *Chicago & North Western R. R. Co.* v. *City of Albion*, 192 N. W. (Neb.) 233. In that case, which involved an assessment for special benefits, the railroad company appeared long after the proceeding had been instituted and after the testimony, on which the assessment was based, had been offered. The court states the facts as follows (p. 233):

> "The record shows that a notice was published to all property owners in the districts that the city council would sit in special session on October 21, 1918, at 8 o'clock p. m. for the purpose of fixing the valuation of the lots within paving districts Nos. 1, 2 and 3, and for the purpose of equalizing and distributing the costs of the improvement upon the property benefited 'according to law and the benefits derived therefrom.' The council met, took up the matter, and adjourned until October 24, 1919. A number of adjourned meetings were held, and finally on November 12, 1919, 'after arriving at a tentative agreement as to values and benefits, the clerk was instructed to embody the same in a schedule for further consideration at a future meeting.' An adjournment was taken to November 14. At that meeting the Chicago & Northwestern Railway Company appeared and requested the privilege of offering testimony in regard to the assessment of paving taxes on their property, and

further asked the board to introduce the evidence upon which it based its findings in fixing the assessment, so that it might be preserved in a bill of exceptions. The council permitted the railway company to present whatever testimony it desired, but the request that the evidence leading to the findings of the board be incorporated in a bill of exceptions was refused."

Testimony offered by the company was received and the board then fixed the assessment. The court held that the board must be considered to have acted as appraiser of the benefits, acting upon information and upon their own knowledge of the property, and that the fact that the record did not set forth the evidence upon which the board acted would not render the assessment erroneous. The decision shows no reason for the long delay on the part of the railroad company, and it would certainly be more than could be expected to have the board retrace all of its steps and show on what evidence it acted. A litigant, who remains out of court until the trial of his case is nearly concluded, should not expect the court to retry the case for his benefit.

VII. The Jurisdiction of the Federal Court.

It is fundamental, of course, that if there is jurisdiction in the federal equity courts the law of a state cannot defeat such jurisdiction. The question here is whether or not, there being an adequate remedy under the state statutes, a Federal equity court, as controlled by the Federal law, has jurisdiction. We cite some of the cases decided by this court holding that wherever there is an adequate remedy at law, provided by the state statutes, Federal equity jurisdiction will not be exercised to restrain the collection of state taxes.

Dows v. *City of Chicago*, 11 Wall. 108 was a suit in the Circuit Court of the United States for the northern district of Illinois, carried on appeal to the Supreme Court of the United States. The court said (pp. 109-110):

"According to the view we take of this case, it is unnecessary to consider the force of any of the objections urged by the appellants to the decrees rendered. Assuming the tax to be illegal and void, we do not think any ground is presented by the bill justifying the interposition of a court of equity to enjoin its collection. The illegality of the tax and the threatened sale of the shares for its payment constitute of themselves alone no ground for such interposition. There must be some special circumstances attending a threatened injury of this kind, distinguishing it from a common trespass, and bringing the case under some recognized head of equity jurisdiction before the preventive remedy of injunction can be invoked. It is upon taxation that the several states chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible. Any delay in the proceedings of the officers, upon whom the duty is devolved of collecting the taxes, may derange the operations of government, and thereby cause serious detriment to the public.

"No court of equity will, therefore, allow its injunction to issue to restrain their action, except where it may be necessary to protect the rights of the citizen whose property is taxed, and he has no adequate remedy by the ordinary processes of the law. It must appear that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, or where the property is real estate, throw a cloud upon the title of the complainant, before the aid of a court of equity can be invoked."

In *Hannewinkle* v. *Georgetown*, 15 Wall. 547, *Dows* v. *Chicago* was affirmed. The case of *Mooers* v. *Smedley*, 6 Johnson's Chancery Reports 28, was approvingly cited by the court.

Mooers v. *Smedley*, *supra*, was a suit in injunction to prevent the payment of certain bounties. Chancellor Kent said (pp. 30-31):

"The act which has been cited (Laws N. Y. vol. 2, p. 137) gave the supervisors authority 'to examine, settle, and allow all accounts chargeable against the county, and to ascertain each town's proportion, and to add such further sum as any town should have voted to be raised for the destruction of noxious animals, and to cause all such sums to be raised and levied.' This power implied, and required the exercise of sound judgment, and the review and correction of all errors, mistakes, and abuses in the exercise of the powers of subordinate public jurisdictions, and in the official acts of public officers, belongs to the Supreme Court. In my opinion, it belongs exclusively to that court. It has, always, been a matter of legal, and never a matter of equitable, cognizance. This is not the case of a private trust, but the official act of a political body; and in the whole history of the English Court of Chancery, there is no instance of the assertion of such a jurisdiction as is now contended for. The superintending control, in these cases, has always been exercised in the Court of K. B., and nowhere else, and that court has proceeded by certiorari, mandamus, prohibition, information, etc. I have only to regret, that I cannot afford a remedy to the party aggrieved; but I am clearly of opinion, that I cannot uphold the injunction, and the motion must, consequently, be granted."

State Railroad Tax Cases, 92 U. S. 575, was an appeal from a decision granting an injunction against the collection of taxes, the decision was reversed and in speaking of the refusal of federal courts to interfere where there is an adequate remedy at law this court, speaking by Justice Miller, said (pp. 612-614):

"Let us suppose that the complaints made in these cases against the taxes were well founded; that the mode adopted by the board of equalization to ascertain the value of the franchise and capital stock is not the best mode; that it produces unequal and unjust results in some cases; that the same is true of the mode of ascertaining the basis of assessment for the taxation by municipalities; that the board of equalization increased

the entire assessment on each company without sufficient evidence; in short, let us suppose that in these and many other respects the proceedings were faulty and illegal,—does it follow that in every such case a court of equity will restrain the collection of the tax by injunction, or will enjoin the collection of the whole tax when it is obvious that in justice a large part of it should be paid, and if not paid, that the complainant escapes taxation altogether?

"We propose to consider these questions for a moment, because the immense weight of taxation rendered necessary by the debts of the United States, of the several states, and of the counties, cities, and towns, has resulted very naturally in a resort to every possible expedient to evade its force.

"It has been repeatedly decided that neither the mere illegality of the tax complained of, nor its injustice nor irregularity, of themselves, give the right to an injunction in a court of equity. *Moores* v. *Smedley*, 6 Johns. Ch. 27; *Dodd* v. *Hartford*, 26 Conn. 239; *Green* v. *Munford*, 5 R. I. 478; *Messert* v. *Supervisors of Columbia*, 50 Barb. 190; *Dow* v. *Chicago*, 11 Wall. 108; *Hannewinkle* v. *Georgetown*, 15 Wall. 548.

"The government of the United States has provided, both in the customs and in the internal revenue, a complete system of corrective justice in regard to all taxes imposed by the general government, which in both branches is founded upon the idea of appeals within the executive departments. If the party aggrieved does not obtain satisfaction in this mode, there are provisions for recovering the tax after it has been paid, by suit against the collecting officer. But there is no place in this system for an application to a court of justice until after the money is paid.

"That there might be no misunderstanding of the universality of this principle, it was expressly enacted, in 1867, that 'no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.' Rev. Stat. Sec. 3224. And though this was intended to apply alone to taxes levied by the United States, it shows the sense of congress of the evils

to be feared if courts of justice could, in any case, interfere with the process of collecting the taxes on which the government depends for its continued existence. It is a wise policy. It is founded in the simple philosophy derived from the experience of ages, that the payment of taxes has to be enforced by summary and stringent means against a reluctant and often adverse sentiment; and to do this successfully, other instrumentalities and other modes of procedure are necessary, than those which belong to courts of justice. See *Cheatham* v. *Norvell*, decided at this term; *Nickoll* v. *United States*, 7 Wall. 122; *Dow* v. *Chicago*, 11 Wall. 108.

"In this latter case, this court, after commenting upon the necessary reliance of the state governments upon the prompt collection of the taxes for their support and maintenance, and the ill consequences of interference with their proceedings in that matter, says, 'No court of equity will, therefore, allow its injunction to issue to restrain their action, except where it may be necessary to protect the citizen whose property is taxed, and he has no adequate remedy by the ordinary processes of the law. It must appear that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, or, when the property is real estate, throw a cloud upon the title of complainant before the aid of a court of equity can be invoked.' So, in the case of *Hannewinkle* v. *Georgetown*, the court says, 'It has been the settled law of this country for a great many years, that an injunction bill to restrain the collection of a tax on the sole ground of the illegality of the tax cannot be maintained. There must be an allegation of fraud, that it creates a cloud upon the title, that there is apprehension of a multiplicity of suits, or some cause presenting a case of equity jurisdiction.' 15 Wall. 548. We do not propose to lay down in these cases any absolute limitation of the powers of a court of equity in restraining the collection of illegal taxes; but we may say, that, in addition to illegality, hardship, or irregularity, the case must be brought within some of the recognized foundations of equitable jurisdiction, and that mere errors or excess in valuation, or hardship or injustice of

the law, or any grievance which can be remedied by a suit at law, either before or after payment of taxes, will not justify a court of equity to interpose by injunction to stay collection of a tax."

In *Pittsburgh etc. Ry. v. Board of Public Works of West Virginia,* 172 U. S. 32, the Pittsburg etc. Railway, an Ohio corporation, owning and operating a railway running through the state of West Virginia and other states, and owning and using a bridge across the Ohio river, filed its bill in equity in the Federal Circuit Court, District of West Virginia, against the board of public works of the state of West Virginia and its members and against a local sheriff to restrain the assessment and collection of taxes upon the bridge under Section 67, Chap. 29 of the Code of that state. The bill alleged that by that section of the Code, plaintiff was required to make return in writing, under oath, to the auditor of state, each year, of its property subject to taxation in the state. The auditor was required to present the return to the board of public works which was authorized either to approve the return or to proceed to assess the fair cash value of all property of the railroad company which it was so required to return for taxation. And it was further provided that as soon as possible after the value of any railroad property was fixed for purpose of taxation by one of the several methods designated by that section, the auditor should assess and charge such property with the taxes properly chargeable thereon.

The bill also described a portion of the location of the railway; that the bridge across the Ohio was a part of its railway, giving measurements; that the plaintiff had made the return as required by law.

The bill also alleged that the board of public works refused to approve plaintiff's return, and proceeded to asse the plaintiff with certain main track and certain second

track, which assessment and valuation covered the entire line of its railroad in the state of West Virginia, including so much of the bridge as lay within the state; and in addition thereto valued and assessed the bridge as a separate structure at the sum of $200,000, placing the tax thereon at $3060, thereby assessing the plaintiff with the entire length of the bridge in West Virginia as a part of its railway in the state and also assessing it with the bridge as a separate structure, thus taxing the plaintiff a second time for that part of its bridge which lay in West Virginia; whereas, the bridge should only have been assessed as so many feet of the railway. The plaintiff also alleged facts concerning lack of notice to the plaintiff of the assessment; payment of a portion of its tax and a refusal to pay the $3060, that thereafter the auditor added 10% to that sum to pay the expense of collection and certified the same to the sheriff for collection; that the sheriff was threatening to collect the same by legal process and thus would inflict irreparable injury upon plaintiff unless enjoined.

The plaintiff alleged that the property was used in conducting inter-state commerce, that the tax was illegal and unjust and constituted a cloud upon the title to the property, and prayed for an injunction to prevent collection. The bill was dismissed on demurrer. The decision was affirmed because the plaintiff had not availed itself of the adequate remedies provided by the statute of the state.

In its decision this court said (37):

> "The collection of taxes assessed under the authority of a State is not to be restrained by writ of injunction from a court of the United States, unless it clearly appears, not only that the tax is illegal, but that the owner of the property taxed has no adequate remedy by the ordinary processes of the law, and that there are special circumstances bringing the case under some recognized head of equity jurisdiction. *Dows* v. *Chi-*

cago, 11 Wall. 108; *Hannewinkle* v. *Georgetown*, 15 Wall, 547; *State Railroad Tax cases*, 92 U. S. 575; *Union Pacific Railway* v. *Cheyenne*, 113 U. S. 516; *Milwaukee* v. *Koeffler*, 116 U. S. 219; *Shelton* v. *Platt*, 139 U. S. 591."

After discussing the cases cited, the court continued (44):

"The same section further provides that the decision made by the board of public works shall be final, unless the railroad company, within thirty days after such decision comes to its knowledge, appeals (which it is expressly authorized by the statute to do) from the decision as to the assessment and valuation made in each county through which the railroad runs, to the circuit court of that county. The appeal is to have precedence over all other cases, and is to be tried as soon as possible after it is entered. That court, on such appeal, is to hear all legal evidence offered by the appellant, or by the state, county, district or municipal corporation, and if satisfied that the valuation as fixed by the board of public works is correct, to confirm the same; but, if satisfied that such valuation is too high or too low, to correct it, and to ascertain and fix the true value of the property according to the facts proved, and certify such value to the auditor.

"This provision for a review and correction, by the circuit court of the county, of the assessment made by the board of public works affords a convenient and adequate remedy for any error in the taxation, and has been held by the highest court of the State to be in accordance with its constitution. (Citing case).

"That court has often had occasion to inquire how far the action of the circuit court of the county, in this respect, is administrative only, and how far it may be considered as judicial in its nature. (Citing cases).

"But it is not important, in this case, to pursue that course of inquiry; since, in matters of taxation, it is sufficient that the party assessed should have an opportunity to be heard, either before a judicial tribunal,

or before a board of assessment, at some stage of the proceedings."

Shelton v. *Platt*, 139 U. S. 591, was an action to enjoin the collection of a license tax upon an express company under a statute of the state of Tennessee. The circuit court granted an injunction but the case was reversed in this court, which said (594):

> "It was ruled in *Dows* v. *Chicago*, 11 Wall. 108, 112, that a suit in equity will not lie to restrain the collection of a tax on the sole ground that the tax is illegal, but that there must exist, in addition, special circumstances bringing the case under some recognized head of equity jurisdiction, such as that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, or, where the property is real estate, throw a cloud upon the title of the complainant. And Mr. Justice Field, speaking for the court, said: 'The equitable powers of the court can only be invoked by the presentation of a case of equitable cognizance. There can be no such case, at least in the Federal courts, where there is a plain and adequate remedy at law. And except where the special circumstances which we have mentioned exist, the party of whom an illegal tax is collected has ordinarily ample remedy, either by action against the officer making the collection or the body to whom the tax is paid. Here such remedy existed. If the tax was illegal, the plaintiff protesting against its enforcement might have had his action, after it was paid, against the officer or the city to recover back the money, or he might have prosecuted either for his damages. No irreparable injury would have followed to him from its collection. Nor would he have been compelled to resort to a multiplicity of suits to determine his rights. His entire claim might have been embraced in a single action. We see no ground for the interposition of a court of equity which would not equally justify such interference in any case of threatened invasion of real or personal property.'"

In *Allen* v. *Pullman's Palace Car Co.* 139 U. S. 658, suit was instituted in the Circuit Court of the United States for the Middle District of Tennessee against the comptroller of that state for an injunction to restrain him from the collection of certain license fees. An injunction was granted by the Circuit Court, which was reversed in the Supreme Court principally upon the authority of *Shelton* v. *Platt*, 139 U. S. 591.

In *Indiana Mfg. Co.* v. *Kochne*, 188 U. S. 681, a bill was filed in the circuit court of the United States for the district of Indiana, to enjoin the collection of certain taxes. The bill was there dismissed. On appeal to this court, the dismissal was affirmed, and the court said (p. 684):

> "The foundation of this appeal to equity, as averred by complainant, was (1) on the ground that the assessment constitutes a cloud upon title; (2) that there is no adequate remedy at law; (3) that a multiplicity of suits is avoided; and (4) that it prevents irreparable injury to complainant.
>
> "It has long been the settled doctrine of the federal courts that the mere illegality of a tax, or the mere fact that a law upon which the tax is founded is unconstitutional, does not entitle a party to relief by injunction against proceedings under the law, but it must appear that the party has no adequate remedy by the ordinary processes of the law, or that the case falls under some other recognized head of equity jurisdiction, such as multiplicity of suits, irreparable injury, etc. *See Cruickshank*, v. *Bidwell*, 176 U. S. 73, 80, where many of the authorities upon this subject are collected in the opinion which was delivered by Mr. Chief Justice Fuller. See also *Pittsburgh, etc., Railway* v. *Board of Public Works*, 172 U. S. 32, where Mr. Justice Gray dealt with the subject quite fully. We must judge the case at bar under the rules laid down by the authorities cited."

The court then discussed the several grounds alleged. The plaintiff owned no real estate and consequently there could be no cloud upon title. The statute authorized suit for the repayment of taxes illegally collected, and that was determined to be an adequate remedy. Upon the ground that the action would prevent a multiplicity of suits, this court said (p. 689):

> "The remedy provided by the state of Indiana is in truth but one proceeding, and all the complainant had to do in order to avail itself of such remedy was to appear before the board of review when the assessment was first made and object to it, and if its objections were overruled, then to appeal to the state board, and if that board also overruled the objection, then to pay the tax. The proceeding thereafter is one suit commenced by application to the board of county commissioners to recover the tax wrongfully assessed, and if the claim were refused, then the party might go into the circuit court, and if refused again, it had the further right of appeal, and if still refused, it then had the right of review by writ of error from this court, if any Federal question had been decided against it. The right to come into a Federal court and invoke its equitable jurisdiction in order to avoid the remedy thus provided by the state cannot, under these facts, be founded upon the alleged prevention of a multiplicity of suits. The claim on such ground is without foundation."

In answer to the claim that irreparable injury was threatened, it was said (p. 690):

> "There is a general averment that to enforce the tax by distraint and sale of complainant's property would result in irreparable injury, but there is no fact stated from which it could be inferred that irreparable injury would be likely to result from such enforcement, and where a plain and adequate remedy to recover the amount is given by statute no such irreparable injury can be inferred."

Singer Sewing Mach. Co. v. *Benedict*, 229 U. S. 481, was an action by a New Jersey corporation to enjoin the col-

lection of taxes in the city and county of Denver. The case was instituted in the Federal District Court where it was dismissed, the Circuit Court of Appeals affirmed the decision and the case was brought to this court on appeal. In its decision of affirmance this court used the following language (pp. 484-485):

> "In the courts of the United States it is a guiding rule that a bill in equity does not lie in any case where a plain, adequate and complete remedy may be had at law. The statute so declares, Rev. Stat., Sec. 723, and the decisions enforcing it are without number. If it be quite obvious that there is such a remedy, it is the duty of the court to interpose the objection sua sponte, and in other cases it is treated as waived if not presented by the defendant in *limine*. *Reynes* v. *Dumont*, 130 U. S. 354, 395; *Allen* v. *Pullman's Palace Car Co.*, 139 U. S. 658. There was no waiver here. The objection was made by the demurrer and again by the answer, and so, if it was well grounded, it was as available to the defendants in the Circuit Court of Appeals to prevent a decree against them there as it was in the Circuit Court. *Boise Artesian Water Co.* v. *Boise City*, 213 U. S. 276.
>
> "In the last case it was said of the pertinency of the guiding rule in cases such as this (p. 281): 'A notable application of the rule in the courts of the United States has been to cases where a demand has been made to enjoin the collection of taxes or other impositions made by state authority, upon the ground that they are illegal or unconstitutional. The decisions of the state courts in cases of this kind are in conflict, and we need not examine them. It is a mere matter of choice of convenient remedy for a state to permit its courts to enjoin the collection of a state tax, because it is illegal or unconstitutional. Very different considerations arise where courts of a different, though paramount, sovereignty interpose in the same manner and for the same reasons. An examination of the decisions of this court shows that a proper reluctance to interfere by pre-

vention with the fiscal operations of the state governments has caused it to refrain from so doing in all cases where the Federal rights of the persons could otherwise be preserved unimpaired. It has been held uniformly that the illegality or unconstitutionality of a state or municipal tax or imposition is not of itself a ground for equitable relief in the courts of the United States. In such a case the aggrieved party is left to his remedy at law, when that remedy is as complete, practicable and efficient as the remedy in equity.'"

And further (p. 486-487):

"We refer to these cases, not as defining the jurisdiction in equity of the Circuit Court, for that they could not do (*Payne* v. *Hook*, 7 Wall. 425, 430; *Whitehead* v. *Shattuck*, 138 U. S. 146; *Smythe* v. *Ames*, 169 U. S. 466, 516), but as showing that the Colorado statute gave to one who should pay illegal taxes a right to recover back from the county the money so paid. This right was one which could be enforced by an action at law in the Circuit Court, no less than in the state courts, if the elements of Federal jurisdiction, such as diverse citizenship and the requisite amount in controversy, were present. *Ex parte McNiel*, 13 Wall. 236, 243; *United States Mining Co.* v. *Lawson*, 134 Fed. Rep. 769, 771. Thus it will be perceived that, if the taxes in question were illegal and void, as asserted, the company had a remedy at law. It could pay them and, if the commissioners refused to refund, have its action against the county to recover back the money. Such a remedy, as this court often has held, is plain, adequate and complete in the sense of the guiding rule before named, unless there be special circumstances showing the contrary. *Dows* v. *Chicago*, 11 Wall. 108, 112; *State Railroad Tax Cases*, 92 U. S. 575, 613-614; *Shelton* v. *Platt*, 139 U. S. 591, 597; *Allen* v. *Pullman's Palace Car Co.*, Id 658, 661; *Indiana Manufacturing Co.* v. *Kochne*, 188 U. S. 681, 686."

Keokuk & Hamilton Bridge Co. v. *Salm*, 258 U. S. 122, was an appeal from the district court of the United States for

the southern district of Illinois, to review a decree of dismissal in a suit to enjoin the collection of a tax. The Keokuk & Hamilton Bridge Company, an Illinois corporation, owns a bridge across the Mississippi River, that part of which, lying within the state of Illinois, was assessed by the county assessors for purposes of taxation as real estate. The bill alleged that the property was deliberately assessed at 150 per cent of its actual value, whereas the property of other corporations and individuals was assessed at only 40 per cent of its value. A motion to dismiss was sustained by the district court, on the ground that the complainant had a plain, adequate and complete remedy at law. On appeal to this court it was said (p. 124) in affirming the decision:

> "But the bill failed to show that plaintiff was being deprived of property without due process of law, or was being denied equal protection of the laws, or that there was any danger that it would be. Compare *Wells, F. & Co.* v. *Nevada*, 248 U. S. 165, 168, 63 L. Ed. 190, 192, 39 Sup. Ct. Rep. 62. The law of Illinois affords ample opportunity to question the amount and the validity of an assessment, both before administrative tribunals and in its courts."

And further (125):

> "Here the alleged invalidity consists wholly in discriminatory over-valuation; and, so far as appears, appellant did not even apply to the board of review to correct the assessment. There is thus no basis for the contention that resort to a suit such as this was necessary to prevent either a sale for an illegal tax creating a cloud upon title, or multiplicity of suits to recover back the tax, or other irreparable injury."

In connection with *Keokuk & Hamilton Bridge Company* v. *Salm*, we refer to the case of *Wilson et al.* v. *Illinois Southern Railway Company et al.*, decided January 14, 1924, by this Court. The court distinguished the two cases. In the former,

the taxes of a single county were involved; in the latter, those of five counties were involved. Five suits at law would have been necessary, and in addition, "there would be insuperable difficulty in determining what the proper assessment against the whole road should be and in apportioning the due share to the county concerned."

In the present case no such difficulty can arise. One suit, and that expeditious and inexpensive, would determine every issue for all of the seventy-two counties interested. This case is fully within the principles enunciated in the Salm case.

This Court also referred to the provision of the new Illinois statute for an appeal from the state tax commission to the state Supreme Court and said, "How far such an appeal would be adequate upon a charge of fraud against the Commission may be doubted, and the adequacy of a remedy at law must be clear."

The section of the statute referred to is as follows (Sec. 115, Chap. 120, Cahill's Ill. Revised Statutes, 1921):

> "Any person feeling himself aggrieved by any assessment made by the tax commission may appeal to the Circuit Court of the County in which such property or some part thereof is situated, for the purpose of having the lawfulness of such assessment inquired into and determined.
>
> "The person taking such appeal shall file with the tax commission written notice of such appeal, which notice shall state in full the grounds of such appeal. Such notice of appeal shall be filed within ten days after such assessment is made and notice given thereof. Thereupon the tax commission shall prepare and transmit to the clerk of the court to which such appeal is taken a copy of such notice of appeal, and a copy of all evidence, documents, papers, books and files pertaining to such appeal, which copies shall be certified to as correct by the Director of Finance. The appeal shall be heard without formal plead-

> ings upon the record so certified by the tax commission. Appeals shall lie from the judgment of the Circuit Court to the Supreme Court. The remedy by appeal herein provided for shall not be construed to be exclusive."

Two causes render the Illinois statute ineffective. First: The remedy provided is not exclusive. Under the decisions it is established in Illinois that an injunction may be granted when a tax is not authorized by law, when it is assessed upon property not subject to taxation, and when property has been fraudulently assessed too high.

Mich. Central Railroad Co. v. *Carr*, 303 Ill. 354.
Sanitary Dist. v. *Young*, 285 Ill. 351.
The Peoples Gas Light Co. v. *Stuckart*, 286 Ill. 164.

As injunction is a proper remedy and as the statute still recognizes it as such a litigant may institute his suit as well in Federal court as in a state court. There is no remedy by injunction in such cases in Nebraska.

Second: No power to entertain such an appeal is vested in the Supreme Court of Illinois under the Constitution of that state. The Constitution provides (Sec. 1, Art. 9), in part, as follows:

> "The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise * * *."

In *The Public Life Insurance Co.* v. *Pollak*, 75 Ill. 292, it is said, in considering the constitutional provision above quoted (p. 294):

> "Thus it will be seen that all power to fix a valuation is taken from each of the departments of the government. It is unmistakably vested in the persons elected under the

requirements of the statute, and it can only be fixed by them, and not otherwise. The legislative branch of government could not exercise this power, nor could the executive, because the constitution has not only vested it in the persons elected, as directed by the general assembly, but all other persons, bodies, departments, or such bodies combined, are expressly prohibited from performing that duty.

"Nor is there any power, expressed or implied, by which the courts can fix a valuation, or review the action of the assessors. They are invested with the sole power, and we are aware of no authority to review their action. The law has not, nor can it, in view of this constitutional provision, empowered the courts to fix the valuation of property for taxation.

The Burton Stock Car Co. v. *Traeger*, 187 Ill. 9.
The People v. *Millard*, 307 Ill. 556.

It is said by appellant (brief p. 50) that

"the law of Nebraska offered appellant no opportunity to question the amount or validity of its assessment either before administration tribunals or courts."

The record in this case shows that there was an extensive hearing before the state board on complaint filed by appellant (Tr. pp. 106-142).

The decision in *Chicago, Rock Island & Pacific Railway Company* v. *State*, *supra*, disposes of all other criticisms by appellant in connection with *Keokuk & Hamilton Bridge Co.* v. *Salm*, *supra*.

The following cases also illustrate the principles applicable when an adequate remedy is provided by the state:

Milwaukee v. *Koeffler*, 116 U. S. 219.
Burrill v. *Locomobile Co.*, 258 U. S. 34.
Pullman Co. v. *Tamble*, 173 Fed. 200.
McLaughlin v. *St. Louis R. Co.*, 232 Fed. 579.

McDougal v. *Mudge*, 233 Fed. 235.
Missouri P. R. Co. v. *Conway, et al.*, 280 Fed. 401.
Long v. *Norman*, 289 Fed. 5.

VIII. Section 266 of the Judicial Code.

Section 266 of the federal judicial code is in part as follows:

> "It is further provided that if before the final hearing of such application a suit shall have been brought in a court of the state having jurisdiction thereof under the laws of such state, to enforce such statute or order, accompanied by a stay in such state court of proceedings under such statute or order pending the determination of such suit by such state court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the state. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the state, that the suit in the state courts is not being prosecuted with diligence and good faith."

Under the laws of Nebraska, taxes are not collected by suit. Delinquent corporation taxes may be collected from any agent holding money of the corporation by summary process, or taxes may be collected by sale of property.

The equity jurisdiction of the Federal courts is uniform throughout the Union, and if its processes may be stayed by the institution of a suit in a state court in some of the states, it would appear that it would be just to conclude that an error proceeding providing a remedy in advance would be regarded at least as favorably as a suit to enforce collection. This view is strengthened by the fact that courts of equity will adopt remedies provided by state statutes if consistent with equitable principles. No stay of proceedings can be involved in the error proceeding as the cases would have been finally determined long before the statutory liens attached.

The error proceeding appears to meet all that congress intended to require.

Dawson v. *Kentucky Dist. Co.*, 255 U. S. 288.

IX. Authorities of Appellant Discussed.

Appellant alleges that equity jurisdiction exists in this case in order to avoid a cloud upon the title to its property, to prevent a multiplicity of suits and irreparable injury. Appellant might have availed itself of the remedy provided in section 5901, Comp. St. 1922, immediately after its property was assessed, on May 1, 1922. If the petition in error had been promptly filed the case would probably have been disposed of in the Supreme Court of the state of Nebraska, before the date of the levy of taxes in July; at any rate, long before the time that the lien would have attached. The statutory remedy by petition in error would not only have avoided all other suits, but would have also obviated the necessity of bringing in the county officers, made parties in this suit. One suit would have disposed of the entire case. There are general allegations as to the irreparable injury, but, if the statutory remedy had been followed, there could have been no injury. The entire argument of appellant proceeds upon the theory that it was injured because there was no remedy. It failed to pursue the remedy under the statute which is not only plain, adequate and complete but is also highly expeditious. The Federal district court was fully justified in determining that the remedy under the state statute was sufficient.

A few of the cases cited by appellant will now be referred to:

In *Union Pacific Ry. Co.* v. *Cheyenne*, 113 U. S. 516, the doctrine of the *State Railroad Tax Cases, supra*, was fully recognized, but the court held that under the allegations of the bill it was necessary to resort to equity in order to avoid a multiplicity of suits.

Raymond v. *Chicago Traction Co.*, 207 U. S. 20, originated in the Circuit Court of the United States for the northern district of Illinois, where an injunction was granted against certain tax assessment. Upon appeal to this court the decree was affirmed. The assessment was made by the state board of equalization, but from the decision of the board there was no appeal and such decision was conclusive except as relief might be had by injunction. This court said (p. 38):

> "Undoubtedly if there be a complete and adequate remedy at law in such a case as this, the remedy in equity will not be recognized. Assuming the tax to be void, equity will not restrain by injunction its collection, unless there be some other ground for equitable interposition."

In *Cummings* v. *Bank*, 101 U. S. 153, cited by appellant, the statute of Ohio especially provided injunction as a remedy for taxes illegally assessed. No such remedy exists in Nebraska for excessive assessment.

Section 6018, Compiled Statutes of Nebraska, 1922, provides:

> "No injunction shall be granted by any court or judge in this state to restrain the collection of any tax or any part thereof, hereinafter levied, nor to restrain the sale of any property for the non-payment of any such tax, except such tax or the part thereof enjoined be levied or assessed for any illegal or unauthorized purpose * * *."

The statutes afford a plain, adequate and complete remedy to one whose property is excessively valued for taxation and no suit for injunction will lie by reason of such assessment.

Western Union Tel. Co. v. *Douglas Co.*, 76 Neb. 666.
Hahn System v. *Stroud*, (Neb.) 190 N. W. Rep. 572.

Greene v. *Louisville & Interurban Ry. Co.*, 244 U. S. 499, was an action instituted in the District Court of the United

States for the Eastern District of Kentucky to enjoin certain taxes. The court held that the statute of Kentucky did not give an adequate remedy. The court said (p. 520):

> "But, by a line of recent decisions in the Kentucky court of appeals, the effect of this section has been confined to cases where the taxes paid either were wholly without warrant in law or were based upon a mistake as to the rate of taxation upon the amount assessed; and it has been held not to authorize the auditor to correct erroneous assessments, since that official is not intrusted with authority to make assessments."

Smythe v. *Ames*, 169 U. S. 466, cited by appellant, decided that the provision of the Nebraska statute providing for an action did not prevent jurisdiction of the Federal courts. The court referred (644) to section 5 of chapter 72, article 12, of the Statutes of Nebraska for 1893 as not affording an adequate remedy. The provision was in part as follows:

> "Whenever any railroad company or companies in this state shall, in a proper action show by competent testimony that the schedule of rates prescribed by this act are unjust and unreasonable, such railroad or railroads shall be exempt therefrom as hereinafter provided. All such actions shall be brought before the supreme court, in the name of the railroad company or companies bringing the same, and against the state of Nebraska, and upon the hearing thereof, if the court shall become satisfied that the rates herein prescribed are unjust in so far as they relate to the railroad bringing the action, may issue their order directing the board of transportation to permit such railroad to raise its rates to any sum in the discretion of the board; Provided, That in no case shall the rates so raised be fixed at a higher sum than that charged by such railroad on the first day of January, 1893."

It will be observed the statute was an attempt to confer legislative power upon the court and that it went so far as

to limit the board of transportation to rates in force upon a specified date.

Union Pacific R. R. Co. v. *Board of County Commissioners of Weld County, Colorado, et al.*, 247 U. S. 282, was a suit by the Union Pacific Railroad Company to enjoin the collection of a portion of the taxes levied on its property in Weld County, Colorado, the complaint being that the company's property was assessed at one-third of its value, while most of the other property was assessed at one-fifth, and some not at all, and that this operated to place an undue burden of taxation on the company in violation of the constitution and laws of the state and contrary to the due process and equality clauses of the Fourteenth Amendment. A portion of the tax was conceded to be valid and was paid. An application for temporary injunction was denied by the district court and that interlocutory order was affirmed by the circuit court of appeals upon the ground that there was a plain, adequate, and complete remedy at law. The case, however, was not dismissed. An appeal to the Supreme Court of the United States was attempted, but dismissed and the matter was determined on petition for certiorari. For many years the revenue laws of Colorado contained this provision (p. 284):

> "* * * and in all cases where any person shall pay any tax, interest or costs, or any portion thereof, that shall thereafter be found to be erroneous or illegal, whether the same be owing to erroneous assessment, to improper or irregular levying of the tax, or clerical or other errors or irregularities, the board of county commissioners shall refund the same without abatement or discount to the taxpayer."

This court, in discussing the statute, said (p. 285):

> "If that section is still in force, unqualified and unmodified, the conclusion below that in this case there is a plain, adequate and complete remedy at law, and there-

fore that relief by injunction is not admissible, is fully sustained by our decisions. *Singer Sewing Machine Co.* v. *Benedict*, 229, U. S. 481, and cases there cited; *Pittsburg, etc. Ry. Co.* v. *Board of Public Works*, 172 U. S. 32; *Arkansas Building & Loan Assn.* v. *Madden*, 175 U. S. 269; *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20, 38; *Johnson* v. *Wells, Fargo & Co.*, 239 U. S. 234, 243; *Greene* v. *Louisville & Interurban R. R. Co.*, 244 U. S. 499, 519.

"That the taxes were levied for state, school district and town, as well as for county, purposes is not material; for it is apparent from the Colorado statutes and decisions that the section covers broadly the whole of the tax that is found to have been erroneous or illegal, regardless of the purpose for which it was levied and placed on the county tax roll. And it also is immaterial that the taxes were made a lien on the company's real property, for the lien would be effectually removed by paying them and suing to recover back the money. *Allen* v. *Pullman's Palace Car Co.*, 139 U. S. 658, 661; *Arkansas Building & Loan Assn.* v. *Madden, supra*, 273.

"Whether the section named is still in force, unqualified and unmodified, is the important question."

The court, after discussing certain amendments, continued (p. 287):

"An examination of the new statute shows that the controversy just outlined is not without some real basis and that its solution is not free from difficulty. The question is purely one of state law, and, so far as we are advised, the supreme court of the state has not passed on or considered it. A ruling by us on the question would neither settle it for that court nor be binding in an action to recover the tax if paid. In these circumstances it cannot be said that the company certainly or plainly has an adequate and complete remedy at law. On the contrary, the existence of such a remedy is debatable and uncertain. And this being so, the situation is not one in which cognizance of the present suit properly can be declined."

X. CONCLUSION.

Under the Statutes of Nebraska, as interpreted by the Supreme Court of the state, there is afforded a plain, expeditious, adequate and complete remedy at law to the tax-payer feeling aggrieved. Such remedy avoids a multiplicity of suits, prevents injury and likewise prevents any lien attaching to the property, or in any event holds the enforcement of such lien in abeyance until the procedure under the statute is fully completed. More than that, it is more favorable to the tax-payer than a suit in equity, because being a direct proceeding relief is afforded if the decision of the state board be manifestly wrong, or if there be lack of reasonable uniformity in the assessment of different classes of property, whereas equity will not act unless fraud either actual or constructive is shown.

Under the repeated decisions of this court and cited above the remedy provided by the laws of Nebraska is plain, adequate and complete.

Appellees earnestly ask that the decision of the district court be affirmed.

Respectfully submitted,

O. S. SPILLMAN, Attorney General of Nebraska,
GEORGE W. AYRES, Assistant Attorney General,
HUGH LAMASTER, Assistant Attorney General,
Solicitors for Appellees.

APPENDIX.

OPINION OF THE SUPREME COURT OF NEBRASKA

(Filed December 31, 1923).

IN RE EQUALIZATION OF PROPERTY OF C. R. I. & P. R. Co.

CHICAGO, R. I. & P. R. Co.

v.

STATE.

Number 23693.

1. While the Constitution, section, Art. VIII, requires that "taxes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises," and the statute, section 5820, Comp. St. 1922, requires that all property be assessed at its actual value, an assessment will not be set aside merely because all property has not been assessed at its actual value, provided that the assessment has been made with reasonable uniformity and proportion upon all classes of property.

2. The exclusion by the assessing authorities of "labor costs" in the valuation of improvements upon lands is not warranted by law, and the exclusion of "labor costs" from the value of such improvements when no such exclusion of "labor costs" is made in the valuation of improvements upon railroad property is erroneous, there being no authority of law for such discrimination.

3. In 1920 the valuation of lands and improvements as returned to the state board of equalization and assessment by the county boards averaged more than 68 per cent of the actual value. The state board adopted 68 per cent as a basis for equalization purposes and reduced the valuation accordingly. The valuation of lands and improvements for 1921 and 1922 as returned to the board was much reduced

from the value fixed by the assessment of 1920, which valuation is based, as stated by the board, upon investigations made in 1919 and 1920 "previous to the land boom, and does not cover the period of the highest prices." In 1923 the total reduction from the 1920 valuation was $357,196,797. *Held*, that, under the evidence, the assessment of land in 1923 still remained at about the same percentage of its actual value as in the reduced assessment of 1920.

4. *Held*, further, that, based upon the evidence in the record, the valuation made by the board in 1923 of the property of the complainant railroad was made "at its full actual value," or more.

5. To assess one class of property at 68 per cent to 75 per cent of its actual cash value, and to value the property of another taxpayer at 100 per cent of its actual cash value, constitutes an unlawful discrimination, which is prohibited by the constitution and statutes of the state.

6. While there may be other elements or factors upon which to determine the value of that portion of the line of an interstate railway within this state than those in evidence before the state board of equalization and produced in these proceedings, this court in reviewing the action of such board can only determine the value from the facts in evidence before the board, and those of which it is entitled to take judicial notice.

7. Since there is no evidence that the portion of the line of the complainant railroad extending into other states is of more or less value than the portion of the line in this state, and there is nothing in the record to indicate that this method of allocation is unfair or unjust, the value of the portion in this state may be determined upon a mileage basis, in the proportion that the number of miles in this state bears to the mileage of the whole system.

8. There are no settled or infallible rules for the ascertainment of the actual value of railroad property for the purpose of taxation. Approximation to actual value is all that can reasonably be expected. If the value fixed by the state board bears a similar proportion to the actual value that the valuation of other property does, such a valuation for assessment purposes is valid.

9. Where a collateral attack is made upon the validity of a tax or of an assessment, by injunction, mandamus, or like proceedings, those attacking its validity must show that the valuation was fraudulently made or that there was an intentional discrimination made between classes of property or taxpayers. But where the proceedings of such a board are reviewed in the supreme court upon error proceedings in the same case, the order of the board, like the judgment of a court in a law case, may be set aside if it is manifestly wrong, and the proceedings remanded to the assessing body for the correction of the error made.

Heard before Morrissey, C. J., Letton, Dean, Day and Good, JJ., Shepherd, district judge.

LETTON, J.:

This is a proceeding in error under Section 5901, Comp. St. 1922, to review the assessment for taxation made by the state board of equalization and assessment of that part of its property and franchises required by law to be assessed by that body. The complainant alleged in its petition for a hearing before the state board that all property in the state other than railroad property has been valued for assessment purposes by the county authorities at not to exceed 50 per cent of its actual value; that the law provides that the property of complainant be also valued on the same basis as used for the valuation of all other classes of property; that if the tentative assessed valuation of its property be not

reduced to the same percentage of actual value as other property, or unless all other property be valued and assessed by increasing the value to the percentage at which the complainant's property has been assessed, complainant would be denied the equal protection of the law, and its property would be taken for public use without just compensation and without due process of law. It alleges that the tentative assessment of $10,694,409, made on June 15, 1923, is in excess of the actual value of the complainant's property, which does not exceed $5,186,920, and that this valuation should be further equalized with the assessment of other property in the state. The complainant requested that the board either reduce the valuation of its property to the same percentage of actual value as other property, or that it increase the valuation of all classes of property in each county to the same percentage at which the complainant's property has been assessed. Other railroad companies filed similar complaints. A hearing was had and at its conclusion the board adhered to the tentative valuation.

The testimony on behalf of the railroad companies was in substance as follows: That an investigation was made for them of the sales prices of land in 72 counties for the year ending April 1, 1923. The instructions to the examiners were to omit all transactions that appeared to be the closing up of a farm sale or transfer, and conveyances between parties who were members of the same family, or for natural love and affection, or consideration of love and one dollar. No judicial sales or sales under process were included. The investigation covered 3,227 deeds, the number of acres sold was 648,475, and the total consideration shown by the deeds was $42,411,493. The assessed valuation of the same land in 1922 was $23,730,780. The average sale price per acre was $65.40, and the average assessed valuation per acre on the same land was $36.59, being 56.9 per cent of the sales value. It was not shown which of the sales were for cash or upon

terms. There was no assessment of real estate required under the statute in 1923. The 1922 assessment remains except for improvements placed upon the land within the tax year of 1922-1923. Investigation was also made with regard to mortgaged lands. The valuation placed upon the property by the owners, the appraisement made by the loan companies and the assessed valuation were compared. In these counties the owners' valuation was $60,854,436; the appraisement made by the loan companies was $49,004,938, and the assessed valuation for 1922 was $24,905,799. The assessed value was 40.9 per cent of the owners' valuation, and 50.8 per cent of the loan companies' appraisement. There was also introduced a large number of affidavits of different landowners in the respective counties, all substantially to the effect that in each county the affiant had personally investigated the lands transferred in said county from April 1, 1922, to March 31, 1923, so as to acquaint himself with the actual sale price, location and market value of the land. A list of transfers is attached, and the affiants swear that, in their opinions arrived at from actual observation and from information obtained from grantees of some of these transfers, the market value on March 31, 1923, was on the average 100 per cent of that shown by the deeds.

Exhibit 11 was received in evidence. This exhibit contains the evidence and proceedings had before the state board in 1922, the year in which the present assessment of real estate was made. By this it is shown that, as the result of its own investigation in 1919 and 1920, the board of equalization and assessment found and determined, as to real property, for the year 1920, that "the valuations as returned by the county boards averaged 68 per cent of the real valuation as determined by the ratio process." This ratio of 68 per cent of the actual value of real estate was adopted by the board as the basis for equalization purposes. Before this meeting

of the board, at its request, a tentative plan of equalization between the counties of lands and improvements had been prepared by the secretary of the state board of equalization and the secretary of the department of finance. Part of this report is as follows: "Before the assessment period began, a list of the transfers of lands in the different counties, *from July 1, 1918, to July 1, 1919*, was secured from the proper county officials. The list as sent in gave the number of transfers, the description of the land, number of acres, consideration, and 1919 assessed value of the same acres. When these lists were received, they were carefully checked over and transfers which plainly showed they were not *bona fide* sales were not used in compiling the average sale value for the county." The following statement was made and published by the board:

"In the matter of equalization between counties, the state board has adhered to the early announced plan of accepting for valuation purposes the average value placed on lands and improvements by the precinct and county assessing officials. For equalization between counties, the value returned by the assessing officials of each county has been compared with the average real value, as established by the ratio process, based on *bona fide* sales from July 1, 1918, to July 1, 1919. The equalization of the counties on the basis of the sale average was requested of the board at the meeting of the assessing officials of the counties held July 20, 1920. The ratio process, used in correcting the sale averages, is the plan used by Wisconsin for a number of years, and Minnesota and other states have adopted the same plan.

"Under this plan of equalization, the state board has the combined judgment, as to value, of the assessing officials of the counties and of the buyers and sellers of real estate for a year's period. *The year taken was previous to the land boom and does not cover the period of the highest prices.*

"The valuations as returned by the county boards *averaged 68% of the real value,* as determined by the ratio process, and the *state board adopted this 68%* as the basis for equalization purposes. * * *

"That the board has adhered very closely to the above plan is shown by the fact that the average real value, as determined by the ratio process, for the state was $94.33, and the average value for assessment purposes $64.98, or 68%.

"Under this plan, the board has accepted and adopted the average valuation of the local assessing officials. In making this equalization the state board has decreased the total value of lands and improvements of the state $91,317,444, or $18,263,549 assessed value." In 1920 land was assessed at one-fifth of its actual value.

The law was changed in 1921 so that all real property was required to be assessed in 1921 and 1922, and every second year after 1922, "which assessment shall be used as a basis of valuation for taxation until the biennial assessment." Laws 1921, Ch. 125, approved March 11, 1921. This act was no doubt passed because it was believed that there had been a decline in the value of farm lands and that the former assessment was not a proper measure of the actual value of the land in 1921. In 1921, following the passage of this act, the board issued a statement to the county assessors, a part of which is as follows: "The unexpected passage of this emergency law makes it impossible for this department to follow up with any figures to assist you and you will have to rely on last year's figures, together with your knowledge of your local county, and, in addition to this, follow instructions from this department and the law governing your duties." Instructions were also sent out by the state tax commissioner to county assessors to "value any improvements that may have been added to or removed from any parcel

of land or lot where such improvement is of the value of $100 or more," and that in "arriving at the value for added improvements it would seem to be equitable to *exclude from the value of such improvements the labor costs* of such improvements." It is to be presumed that the assessors followed the instructions of the tax commissioner, the secretary of the state board, and did not assess the labor costs of the improvements made during the years following these instructions.

The effect of this action of the board and of these instructions is shown by the report of the state auditor for 1922. The total assessed valuation of land and improvements for 1920 was $446,328,959, reduced to $428,894,670 by the board. This was upon a valuation of 20 per cent of the actual value. The actual value was therefore considered to be $2,144,473,350, while the assessed valuation for 1921, based on actual value, was $1,831,048,878, a reduction of $313,424,472 from the previous assessment, although this included the value of added improvements, less "labor costs." In 1922 there was again a reduction of $77,736,568, making a total reduction of $391,161,040, exclusive, presumably, of the "labor costs." The exclusion of these must have made a large added reduction. Why labor costs, which are ordinarily considered to be about one-third of the cost of building above the cost of material when the material is on the ground, should be excluded from the value of the improvements to lands, and no such exclusion of labor costs be made in the valuation of improvements made upon railroad property, is unexplained. The board made no change in the returns, so it is to be presumed that about one-third of the value of improvements upon lands was omitted from the valuation. These instructions show an intent to discriminate between these respective classes of property, which was erroneous, and, since never withdrawn, they must be considered in fixing a relative equality of valuation.

The assessment of 1920, as equalized, adopted 68 per cent of the actual value of farm lands and improvements as the basis of valuation. The state board on July 25, 1921, passed a resolution fixing the railroad valuation at the same as that fixed by the board in May, 1920, reciting, "considering the fact that land and improvements outside of the railroad right of way, in 1920, was increased approximately 62 per cent over that of the prior year, and it having been assumed by the board at the time of fixing the valuation of the railroads in May of 1920 that the general average increase obtained in the state would not exceed 40 per cent, and for a further reason that the land constituting the right of way of the railroad companies is, to the minds of the board, a better grade of land than the general average in the state, and is improved to the extent that it is graded for the accomodation of the rolling stock of the companies, and to which no consideration has heretofore been given, and from the fact that the average reduction over 1920, per acre, as returned by the assessing authorities is approximately 15.51 per cent, that by allowing the railroads to be and remain as fixed by the state board heretofore in May, 1920, will result in a fair and an equal valuation as compared to farm lands generally in the state." We have not been able to ascertain on what, if any, evidence this finding was made.

In 1922 the assessing resolution adopted merely expressed in general terms that the board, having taken into consideration all the facts required to be supplied by the railroad companies, from all the information which they were able to obtain, "do hereby ascertain, appraise, fix and assess for the purpose of general taxation the *full actual value* of the property of each of the several systems or companies in the state of Nebraska as hereinafter recited," fixing the value of the property of complainant at $10,694,326. There is in evidence a formula which was used by the state board in 1922

in determining the value of the property of appellant in this state, which is as follows:

"ROCK ISLAND.

Net earnings in Nebraska.....	$ 118,480.83 deficit
Assessment	11,502,985.00
6% of which is.....	690,179.10
This added to deficit gives.....	808,659.93
This deducted from $11,502,985 gives....	10,694,326.00

Or assessment for 1922."

The exhibit was received without objection, but neither complainant nor counsel for the state board have been able to explain why this manner of assessment was adopted.

On June 15, 1923, the following resolution was adopted by the board:

"Whereas, the various railroad companies operating in Nebraska have requested of this board a reduction in the valuation of their property for assessment purposes this year, and whereas, it is not possible under the statute to revalue farm property and other real estate until next year, and whereas, the records disclose that the percentage of increase in the assessed valuation of farms, homes and other forms of real estate has been out of proportion to that of other property, and that the percentage of the taxes paid by the railroads is not in excess of their proportionate share of the total taxes paid by all classes of property, be it therefore resolved, that the application for a reduction in the valuation of railroad property be denied."

The board also resolved that it "do hereby ascertain, appraise, fix and assess for the purpose of general taxation the *full actual value* of the property of each of the several systems or companies in the state of Nebraska as hereinafter

recited: Chicago, Rock Island & Pacific Railway Co., 245.51 miles of track; total actual value $10,694,409." At the hearing on the complaint it was stated by the secretary of the board that this resolution was based upon a table prepared by him. This table is in evidence as Exhibit No. 9. It compares the assessed valuation and the actual valuation of farm lands and improvements, town lots and improvements, and railroad property from 1902 to 1922, inclusive. The statement purports to show that the assessed valuation of farm lands from 1902 to 1920, inclusive, increased 377.62 per cent, while the increase in the value of railroad property was only 136.4 per cent. One of the tax experts of the complainant testified that he had made an analysis of the figures in Exhibit No. 9. He called attention to the fact that 1902—the year in which the secretary takes the actual value as five times the assessed value, and from which he draws the conclusion that from 1902 to 1922, the increase in value of farm lands and improvements was 377.62 per cent—land was only assessed at about one-tenth of its value, instead of one-fifth. The new statute requiring one-fifth of the value to be taken was not in force until September, 1903. So that in this respect the percentage of increase submitted to the board and adopted by it as a basis of comparison with the increase in the value of railroad property as assessed by the state board is fallacious. He further testifies that the increase in railroad mileage between 1902 and 1922 was 526.98 miles, or 9.3 per cent, while the increase in acreage of farm lands between 1902 and 1922 was 41.4 per cent, and that the average assessed value of improved land in Nebraska for 1902 was $3.71 per acre as shown by the report of the state auditor for that year, page 159.

A number of affidavits from taxpayers in many counties of the state are in the record, substantially to the effect that the assessed valuation in 1922 was 100 per cent of the real

value of the land, and that lands have decreased in value since that time.

Objection was made by the state that the railroad companies did not at the time when the assessment of real estate was made, that is, 1922, object to these assessments. But the record shows that complaint was made in 1922, and that statistics were produced showing a disproportion between the sales value and the assessed valuation of lands, but that the 1922 assessment was made as hereinbefore set forth. From a consideration of all the evidence, and in consideration of the reduction from the assessed valuation of land and improvements made in 1920, which assessment was made, as the board recites, "before the boom period of land sales," and which was only 68 per cent of the actual market value of the lands, and the later omission of labor costs in the valuation of improvements, we are convinced that the percentage of assessed valuation of lands and improvements to actual value remains about as it was in 1920.

We must now consider upon what basis the assessed valuation of the property of the complainant was made, and whether, as the board recites in its resolutions of 1921 and 1922, it is based upon the actual value of the property. The law requires that all property be assessed "at its actual value" which is defined to be "its value in the market in the ordinary course of trade." Comp. St. 1922, Sec. 5820. If, however, as between two classes of taxpayers, the property of each is assessed at a lower value but at the same proportion of its actual value, there is no ground for complaint on the part of either. But if the property of one is valued at its actual value and that of another at only 68 per cent of its actual value, inequality results and an unjust and unlawful exaction is made. *State* v. *Osborne*, 60 Neb. 415. At the time the tentative assessment of June 15 was made the state board had before it the report of the complainant required to be made

by the statute. Comp. St. 1922, Sec. 5841. This report, with supplementary information, shows the entire mileage of the system to be 7,635.13. It is conceded by the state that the total mileage of track operated by the complainant in this state is 250.41, of which it owns 241.51 miles. The report shows that there is $129,556,489 of paid-up capital stock, that its actual market value is $78,411,431.76, and the total amount of obligations, including notes given for equipment, is $262,411,305.98. In addition to this, the report contains the number of acres of right of way, an enumeration of property subject to be locally assessed, situated outside the right of way, and also an account of the equipment used in the state. We are unable to determine upon what basis the tentative assessment was made by the board. At the later hearing upon the complaint, the complainant introduced Exhibits Nos. 1 to 5, inclusive, estimating the value of the entire line on five different bases—the par value of stocks and bonds, market value of stock and bonds, the value of the line as represented by the net railway operating income capitalized at 7 per cent, the value as represented by the annual rental paid by the government capitalized at 7 per cent, and the property investment as determined by *ex parte* 74 of the interstate commerce commission. These values range from 199 millions in gross figures to 375 millions, which represents the par value of the stocks and bonds and equipment notes.

A number of decisions have been cited as to what elements should govern in the valuation of railroad property. There seems to be some conflict as to the proper rule to be adopted, especially with regard to valuation for rate making purposes. We believe that, in reviewing the action of the board, we must consider only those elements of value, the existence of which rests upon the facts in evidence. We may not act upon mere conjecture or theory, which, though the theory may be sound, can only be apprehended by an explanation made by some witness conversant with the intricacies of

railroad accounting. No such explanation was made. The following methods of valuation are presented by the record. They do not possess all the elements or factors generally required by the courts, but they are all that were before the state board, and, since we are merely reviewing their action, we cannot consider any others.

The market value of the corporate stock of the railroad company, together with the value of its bonds and of its outstanding obligations for the purpose of equipment, represents in a sense the market value of the entire property, although other elements should enter into the valuation, since the value of stocks and bonds fluctuates frequently from extraneous causes. The report to the state board shows that the market value of the stock is $78,411,431.76; that the total amount of the funded debt and outstanding equipment notes is $262,411,305.98, making the total indebtedness and the market value of the stock $340,822,737.74. Again, the net railway operating income for 1922 is in evidence. The value of the property may in one sense be considered to be the amount of capital investment which will produce that amount of income at the rate of 5¾ per cent per annum, which is considered by the interstate commerce commission to be a fair rate of return on such an investment, or at 6 per cent which we consider to be a fair rate. It was stipulated in open court by the parties that the net income from the operation of the railroad for 1922, after payment of taxes, equipment rents, track rents, and operating expenses, was $13,934,468.51. Assuming that a net income of 6 per cent per annum is a fair return upon the capital invested, we may consider as one estimate of the value $232,241,141.83.

There is a discrepancy between the original report to the board and Exhibit No. 2 introduced at the hearing, with respect to the market value of the stocks and the amount of the funded indebtedness and equipment notes. In the origi-

nal report this is placed at $340,822,737.74, while in Exhibit No. 2 it is placed at $286,981,456. The par value of the stocks and securities of the entire system is $375,529,812. The evidence shows that $10,463,501 of the stock was not paid up, leaving the total par value of the paid-up stock and the outstanding obligations $365,066,311. A statement made to the interstate commerce commission as of October 1, 1919, shown in Exhibit No. 5, places the entire property value at $343,802,202. Averaging all of these figures, we are satisfied that the value of the entire system is not less than about 314 million dollars. None of these outstanding obligations include claims for damages, wages, interest, and other liabilities which are payable out of income and which do not represent investments in property.

There are other elements of value which, under the decisions, should or might be considered, but we are confined to the proofs which were actually before the board. The rule in *Smythe* v. *Ames*, 169 U. S. 466, 547, stated by Mr. Justice Harlan, is as follows:

"The original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property."

In *State* v. *Savage*, 65 Neb. 714, 757, the question how the value of railroad property shall be assessed is considered, and it is said by Judge Holcomb:

"While conceding that the market value of the stocks and bonds of a railroad corporation may not always furnish the best evidence, or the exclusive criterion of the value of the corporate property, it cannot, we think, be gainsaid that the amount and value of such stocks and bonds, if not subject to extraneous influences, would very generally, if not uniformly, be a most important factor in the determination of the value of the corporate property which they represent, and should receive due consideration, with other pertinent evidence, in reaching a correct conclusion as to the actual value of such property."

In *State Railroad Tax Cases*, 92 U. S. 575, 605, it is said by Mr. Justice Miller:

"It is therefore obvious that, when you have ascertained the current cash value of the whole funded debt, and the current cash value of the entire number of shares, you have, by the action of those who above all others can best estimate it, ascertained the true value of the road, all its property, its capital stock, and its franchises; for these are all represented by the value of its bonded debt and of the shares of its capital stock."

The next important question is how much of this value should be allocated to the property of the complainant in Nebraska. The report shows that the main track mileage operated in this state is 250.41. There being no evidence to show any difference in the relative value of the mileage in this state as compared with that in other states, it is not improper under this state of the record to distribute the value upon a mileage basis. In *Wallace* v. *Hines*, 253 U. S. 66, and *Davis* v. *Wallace*, 257 U. S. 478, in which an excise tax, which was apportioned on the ratio which the mileage within the state of North Dakota bore to the entire mileage of the system, and in which the bill of complaint alleged that on

account of the differences of value of the line in the region through which the road passed in North Dakota, from its value in the more densely populated portion of the country in which its valuable terminals lay, the value of the mileage in North Dakota was very much less than the value of the mileage in other states, the Supreme Court of the United States held that, under these facts, the ratio which the mileage in North Dakota bore to the entire mileage was not a fair method of determining the value of that part of the system lying in North Dakota.

The evidence upon which the state board of equalization acted in this case shows no such disparity in value or difference in conditions between the mileage of the Rock Island road in Nebraska and in other states. So far as appears there is nothing unjust or unfair in ascertaining the value of the property of the railroad in Nebraska by comparison of the amount of mileage of main track in this state with the amount of mileage of main track operated in its entire system. The rule is as stated in *Fargo* v. *Hart,* 193 U. S. 490: "A state cannot tax the privilege of carrying on commerce among the states. Neither can it tax property outside of its jurisdiction belonging to persons domiciled elsewhere. On the other hand, it can tax property permanently within its jurisdiction although belonging to persons domiciled elsewhere and used in commerce among the states. And when that property is part of a system and has its actual uses only in connection with other parts of the system, that fact may be considered by the state in taxing, even though the other parts of the system are outside of the state. The sleepers and rails of a railroad, or the posts and wires of a telegraph company, are worth more than the prepared wood and the bars of steel or coils of wire, from their organic connection with other rails or wires and the rest of the apparatus of a working whole. This being clear, it is held reasonable and constitutional to get at the worth of such a line, in the

absence of anything more special, by a mileage proportion. The tax is a tax on property, not on the privilege of doing the business, but it is intended to reach the intangible value due to what we have called the organic relation of the property in the state to the whole system." See *Cleveland, C. C. & St. L. R. Co.* v. *Backus*, 154 U. S. 439; *Illinois C. R. Co.* v. *Greene*, 244 U. S. 555.

On the basis of the value of 314 million dollars for the entire system, the value per mile of the operated main trackage is $40,951. The operated mileage in Nebraska is 250.41, which, upon a mileage allocation, makes the total value of the property of the complainant in Nebraska $10,254,539. The property outside of the right of way locally assessed, which is not assessable by the state board, amounts to $70,273, leaving the value of the assessable property in this state, on this basis, $10,184,266. Some of the lines operated by complainant are owned by subsidiary companies of which it owns all or a large part of the stock, some are leased lines, and upon some of the operated property it has merely trackage rights. However, value inheres in both the trackage rights and in the leases. The value of the whole property must be considered. The statements of value contained in this opinion are only approximate, and not intended to limit or control the state board if or when it becomes necessary to assess or reassess the value of a complainant's line of railroad in Nebraska. The board is entitled to ascertain all the facts which are necessary upon which to base its judgment as to value, and it is the duty of the railroad company whose property is to be assessed to make a full fair and complete statement of all relevant facts, and to assist the board to make a fair valuation. The subject of the valuation of railroads is a different one. Neither railroad commissioners, nor taxing authorities, nor courts have as yet arrived at settled or infallible rules or criteria for the ascertainment of actual value

of such property. Approximation is all that can reasonably be expected.

The Constitution, Section 1, Art. VIII, requires that "taxes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises." It is impossible to secure absolute uniformity in the valuation of property for taxation, more especially where it belongs to different classes. The most that any assessing officer or board can do in this direction is to make a valuation in such a reasonable manner, having regard to all the circumstances, as to show that the intention was not to create disparity but to secure uniformity. And if, after indulging the presumption that the assessing authorities have been endeavoring to perform their difficult and arduous duties in good faith and with impartiality, the differences and discrepancies are not so great or so obvious as to indicate that there has been a substantial error to the prejudice of the complainant, the assessment will not be disturbed. *State* v. *Savage*, 65 Neb. 714. On the other hand, if it is shown by the evidence that the property of one person, individual or corporation, has been assessed out of a reasonable and fair uniformity with that of other property and that the disparity is so great that it violates the requirement of the constitution, then a reviewing court may and should remand the proceedings to the assessing board for correction in order to make the percentage of assessed valuation to actual valuation of all classes and kinds of property as nearly as possible the same. *Sioux City & P. R. Co.* v. *Washington County*, 3 Neb. 30; *McGee* v. *State*, 32 Neb. 149; *State* v. *State Board*, 81 Neb. 139; 2 Elliott, Railroads (3d Ed.) 280, 281, 282. As to error from such tribunals, see *Mathews* v. *Hedlund*, 82 Neb. 825; *Munk* v. *Frink*, 75 Neb. 172.

The valuation for the year 1923 of lands and improvements, as shown by the records of the tax commissioner, is $33,964,244 greater than the valuation for 1922. The total reduc-

tion from the assessed value of such property in 1920 (which valuation, as the board has stated, was made before the great increase in land values) is $357,196,797 a reduction of about 16 per cent from a valuation made on a basis of 68 per cent of actual value. From a careful consideration of all the facts in evidence, we are of the opinion that the valuation of the property of complainant lacks reasonable uniformity with the assessment of lands and improvements; that, as the record recites, the railroad property has been assessed at "full actual value," and that the other class mentioned has been assessed at a much lower percentage. This being the case, the property of complainant should be revalued as nearly as possible at the same percentage of actual value as all other property.

Having come to this conclusion, the finding and order of the state board of equalization and assessment of the value of complainant's property is set aside and the proceedings are remanded to that body for further proceeding in accordance with law. While Section 5882, Comp. St. 1922, seems to apply specifically to where "any tax or part thereof levied under the provisions of this article shall be adjudged illegal and nonenforceable, or shall be set aside by any court of competent jurisdiction on any ground whatever," and specifies what the duty of the board shall be as to reassessing and redetermining the value in such case, the procedure prescribed for such cases seems to be well adapted to such a case as this, where the assessment of the property of the complainant has been decided to lack uniformity with that of other classes of property. We desire in this connection to call special attention to Section 5842, Comp. St. 1922, which gives the board power to consider all facts and information not contained in the reports made by the railroad companies. Where such information is considered, the source from which it has been obtained should, so far as possible, be mentioned in the record, so that a reviewing court may

consult the same sources and thus stand in the shoes of the assessing body.

REVERSED AND REMANDED.

THE STATE OF NEBRASKA, ss.

I, H. C. Lindsay, Clerk of the Supreme Court of the State of Nebraska, do hereby certify that I have compared the foregoing copy of an opinion filed by said Court on the 31st day of December, 1923, with the original on file in my office and that the same is a correct transcript thereof, and of the whole of said original.

In Testimony Whereof, I have hereunto set my hand and caused to be affixed the Seal of said Court, at the City of Lincoln, this 16th day of January, 1924.

(Seal) H. C. LINDSAY,
Clerk.

Statutes, Section 1070: "Terms of the Supreme Court shall be held at the capitol, beginning on the first Monday in January and third Monday in September of each year."

Rule 1 of the Supreme Court of Nebraska: "1. *Sittings of the Court.*—The regular public sessions of this court will be held on the first and third Mondays of each month at 9 o'clock a. m., standard time, during each term."

Number 219.

APR 8 1924
WM. R. STANSBUR
CLERK

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1923.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, APPELLANT,

v.

W. H. OSBORNE, JR., AS TAX COMMISSIONER OF THE STATE OF NEBRASKA, GILBERT E. HAASE, AS COUNTY TREASURER, BUFFALO COUNTY, NEBRASKA, ET AL., APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR DISTRICT OF NEBRASKA.

SUPPLEMENTAL BRIEF OF APPELLEES.

C. S. SPILLMAN, Attorney General of Nebraska,
GEO. W. AYRES, Asst. Atty. Gen'l of Nebraska,
HUGH LAMASTER, Asst. Atty. Gen'l of Nebraska,
Solicitors for Appellees.

WOODRUFF-DEINEMAN CO., Law Briefs, Lincoln, Neb.

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O. S. SPILLMAN, Attorney General of Nebraska,
GEO. W. AYRES, Asst. Atty. Gen'l of Nebraska,
HUGH LAMASTER, Asst. Atty. Gen'l of Nebraska,
Solicitors for Appellees.

Since the filing of appellees' brief appellant has filed a new and enlarged brief in substitution of its former brief. The new brief contains additional matter requiring answer.

1. COMMENTS ON THE EVIDENCE.

Appellant refers to the evidence as though unquestionably sustaining its position (Brief 7, 20). The contrary is true. A few facts will show that there was no overvaluation: In 1912, in a physical valuation proceeding before the Nebraska state railway commission, appellant offered evidence showing that on July 1, 1909, its Nebraska properties had a reproduction new value of upwards of $200,000,000 (Tr. 158 and Exhibit 35). Extensions, additions and betterments, under evidence offered by appellant, since July 1, 1913, amount to nearly $18,000,000 (Tr. 100). Also, the appellant raised no question before the board of equalization and assessment as to the valuation of its own properties (Tr. 104-106). Its only complaint was that other property was under-assessed. Upon that issue the evidence is more favorable to the appellees

All property in Nebraska is assessed at less than actual value. The evidence shows that appellant's property is not assessed more in proportion to its value than is other property assessed in proportion to its value.

2. THE LAW PROVIDING FOR A REVIEW IN THE SUPREME COURT OF THE STATE DOES NOT ATTEMPT TO DEPRIVE THE FEDERAL COURT OF JURISDICTION.

The appellant repeatedly referred to the fact that no state statute can oust the Federal court of jurisdiction and many cases are cited in support of the proposition. All such discussion is outside the present case. There is no claim on the part of appellees that a state statute can, in any case, oust a Federal court of its jurisdiction.

The principles of equity, as administered by the Federal courts, will not permit their jurisdiction to be exercised where the taxes of a state are involved and the laws of such state afford an adequate remedy to correct illegal assess-

ments either before administrative tribunals, or before the courts. Nebraska laws provide an ample remedy. Therefore, the federal courts on principles of equity will not take jurisdiction. Thus, matters in taxation appear to be a distinct exception to the general rule, but, in fact, they are not an exception. In an ordinary case there must be adequate legal remedy offered by the Federal law in order to prevent the jurisdiction of the Federal courts from attaching. In taxation matters the courts refuse to take jurisdiction until the remedies offered by the laws of the state have been exhausted. The reasons for this are obvious.

Taxes are not obligations until duly levied on proper assessments. As long as there remains anything which the state may do before the assessment becomes final, there is no ground for equitable interference. In this case, if the appellant had invoked the power of the Supreme Court of Nebraska by an error proceeding and had secured the setting aside of the board's order, there would have been no assessment. The board would have had to reassess the property before there could have been a final assessment. Appellant seems to confuse the term "final order," as used in Section 9128, Statutes of Nebraska for 1922 (p. 21, first brief of appellees), with an order that is not subject to any further action. A "final order" is an order affecting a substantial right and determinative of action. The term is used in contradistinction to an interlocutory order which may not be made the basis of a review. In fact, when the final order is entered authority to review it originates.

3. THE REMEDY OFFERED BY THE STATE FOR THE CORRECTION OF ERRORS OF ITS OFFICERS IN THE ASSESSMENT OF PROPERTY MAY BE EITHER ADMINISTRATIVE OR JUDICIAL.

The Nebraska railroads are assessed (except where assessed locally) by the state board of equalization and assessment. Its decisions are reviewable upon error by the supreme court,

which may set aside the order of the board if it is not in harmony with law. If the order be set aside the proceeding is remanded and a hearing *de novo* before the board takes place. Thus, the assessment may not be complete until the supreme court has decided and the board has again acted. Until there is a valid assessment there can be no tax; therefore, there can be no lien and, of course, no cloud on title, no multiplicity of suits, and no injury of any kind.

It is clear from the cases that the remedy may be either administrative or judicial.

Shelton v. *Platt*, 139 U. S. 591.

Indiana Mfg. Co. v. *Kochne*, 188 U. S. 681.

Singer Sewing Machine Co. v. *Benedict*, 229 U. S. 481.

Keokuk & Hamilton Bridge Co. v. *Salm*, 258 U. S. 122.

4. THE REMEDY PROVIDED BY STATUTE IS PLAIN.

Appellant directs many criticisms against the statute as affording only a doubtful remedy. It is said in its brief (p. 34):

> "Under a strict construction of the statute there was ground for claiming that the railroad assessment was not before the state board at the equalization meeting. Also, Section 5901 authorizes the state board to equalize 'between counties' and 'between classes and kinds of property in any county.' This provision of the statute gave further basis for the argument that railroad property was not before the state board for equalization purposes. In *Hacker* v. *Howe*, 72 Neb. 385, 101 N. W. 255, the supreme court held that the state board did not deal with assessments of individual property owners and the statute seems to contemplate only an equalization between counties and between various classes of property within any county or tax district."

There appears to be no reason for a strict construction. The legislation is remedial and should be construed liberally

in order to effectuate its purpose. The appellant, in filing its objections before the state board of equalization and assessment, treated the statute as giving the board power over railroad assessments; the board received the objections and treated them as though railroad property was before it. The entire proceeding before the board, as shown by the record in this case, indicates that there was no doubt; all parties were clear that the board had power to consider railroad property. Nothing has come to pass since that time to throw doubt upon the statute.

Hacker v. *Howe*, *supra*, referred to the statute as it then existed, section 130, article I, chapter 77, Compiled Statutes for 1903, which read as follows:

> "The state board of equalization and assessment shall, on the third Monday of July of each year, meet at the state capitol for the purpose of equalizing assessments. They shall proceed to examine the abstracts of property assessed for taxation in the several counties of the state, including railroads entirely within such county, and all other property, and shall equalize such assessments so as to make the same conform to law, and for that purpose they shall have the power to increase or decrease the assessed valuation of any county, and such increase or decrease shall be made by a per centum, and the per cent of increase or decrease when made shall be certified to the county clerk of the proper county, who shall thereupon add to or deduct from the assessment of each piece or parcel of property in the county affected, an amount equal to the per cent of increase or decrease fixed by the state board.

There was then no provision as to equalization of classes of property. Now the board not only has all property before it, but it also has power "to increase or decrease the assessed valuation of any class, classes or kinds of property in any county or tax district, whenever in their judgment it shall be necessary to make such assessment conform to law" (Section 5901, Statutes of Nebraska; appellee's former brief, page 10).

Appellant further says (Brief, 35-36):

> "The statute does not provide that railroads, or other individual taxpayers, shall be notified or permitted to appear, present evidence, preserve exceptions or prosecute error. The equalization by the state board is not of a private, but of a public character. The words 'any person, county or municipality affected thereby' may mean the county clerks, county assessors, members of the county boards, counties and municipalities, as they are the individuals and governmental subdivisions notified and authorized to appear before the board."

As the statute fixes the time of meeting notice is unnecessary:

State R. R. Tax Cases, 92 U. S. 575.
Kentucky R. R. Tax Cases, 115 U. S. 321
Pittsburgh, etc., Ry. Co. v. *Backus*, 154 U. S. 421.

The general presumption prevails that there is a right to appear and be heard.

Kentucky R. R. Tax Cases, supra.

The Constitution of Nebraska, Article I, Section 24, preserves the right to be heard in all civil cases in the court of last resort. The statute provides that upon application the board shall furnish a certified transcript of its proceedings (Section 5901; appellee's first brief, page 10). It further privides (Section 9131; appellee's first brief, page 21) for the filing of such a transcript. Section 8823, Comp. Stat. 1922, is, in part, as follows:

> "Provided, any person or officer, or the presiding officer of any board or tribunal before whom any proceeding may be had, shall, on request of any party thereto, settle, sign, and allow a bill of exceptions of all the evidence offered or given on the hearing of such proceeding."

These provisions insure the taxpayer the right to appear, be heard, offer evidence, preserve the same in a bill of

exceptions, secure a transcript and have the matter reviewed in the supreme court.

We have the administrative construction to the effect that the taxpayer has the right to the fullest hearing. In addition there is the construction placed upon the statutes by the parties to this proceeding to the same effect and the salient fact that the appellant had a full hearing before the board (Tran. 104-142).

See also—

Chicago, B. & Q. R. R. v. *Babcock*, 204 U. S. 585.

There is not even a possibility of construing the term "any person" as appellant attempts to construe it. The term "any person" is broad enough to comprehend everyone. General words must be limited to the objects to which the legislature intended to apply them. It is clear that the legislature expressly limited them to persons "affected thereby" and as the legislature has expressed limitations no others can be applied. It is suggested that "any person" may refer to county clerks, county assessors, or members of county boards. As such persons could only appear for counties or municipalities affected their appearance would be the appearance of such county or municipality. It could not be that they are comprehended within the term "any person."

The Nebraska decisions left no doubt in the minds of the majority of the judges of the Federal district court in this case. Their opinions are reprinted as an appendix hereto. They found no difficulty under such decisions in holding that the error proceeding was an adequate remedy. It must be kept in mind that their decision was rendered prior to the decision in the Rock Island case, 197 N. W. Rep. 114.

Appellant complains because no supersedeas is provided by the statute. None is necessary. It provides for expedition in the supreme court and if an aggrieved taxpayer desire

he may have a hearing in that court long before the lien for taxes will attach to his property. The hearing before the board is held on the first Monday of July of each year (Section 5901). The supreme court begins its sittings on the third Monday in September of each year (Section 1070). The lien does not attach to the taxpayer's property until November 1 in the year the taxes are assessed (Section 5823) and distress warrants for collection may not issue before February 1 of the succeeding year (Section 6010).

5. THE CASE OF SIOUX CITY BRIDGE CO. VS. DAKOTA COUNTY, 260 U. S. 441, WAS CONSIDERED IN THIS CASE.

That case was decided January 2, 1923. The present case was not decided until January 10, 1923.

On January 10, 1923, the appellant filed the following motion for rehearing (Tran. 47):

> "Comes now the plaintiff in the above entitled cause and most respectfully moves the court, composed of Honorable Robert E. Lewis, Circuit Judge; Honorable Thomas C. Munger, District Judge, and Honorable Joseph W. Woodrough, District Judge, to set aside its order of January 10th, 1923, refusing to grant plaintiff a temporary injunction, and to grant plaintiff a rehearing upon its application for a temporary injunction, and to consider the opinion of the Supreme Court of the United States in the case of *Sioux City Bridge Company* v. *Dakota County, Nebraska*, No. 105, October term, 1922, January 2, 1923, subsequently to the submission of said application.
>
> "Plaintiff shows that the Supreme Court of the United States say in said opinion, that the statutes of the state of Nebraska, considered in the light of the rule of the law declared by the Supreme Court of the state of Nebraska, in the said Sioux City Bridge Company case, and in *Lincoln Telephone & Telegraph Company* v. *Johnson County*, 102 Neb. 254, in all those cases where a complaining taxpayer's property has been assessed at one hundred per cent of its value while

other property in the taxing district in the same year is intentionally and systematically assessed at a much lower percentage, 'deny the injured taxpayer any remedy at all, because it is utterly impossible for him by any judicial proceedings to secure an increase in the assessment of the great mass of over-assessed property in the taxing district * * *. In substance and effect the decision of the Nebraska supreme court in this case upholds the violation of the Fourteenth amendment, to the injury of the bridge company.'

"Plaintiff most respectfully submits that the decision of the Supreme Court of the United States in the said Sioux City Bridge Company case should induce this honorable court to vacate its former order and to grant a rehearing herein, and to hold that plaintiff was without an adequate remedy at law and to issue a temporary injunction, as prayed in plaintiff's bill. Chicago, Burlington & Quincy Railroad Company, by Byron Clark, Jesse L. Root, Solicitors."

On January 11 (filed January 18, 1923,) the court entered the following order (Tran. p. 48):

"This cause coming on to be heard upon the plaintiff's application to vacate the order of this court entered January 10, 1923, refusing to grant plaintiff a temporary injunction, and the court being well advised in the premises,

"It is ordered that said application be and the same is overruled and denied.

"Dated this 11th day of January, A. D. 1923. Robert E. Lewis, Circuit Judge; J. W. Woodrough, District Judge; Thos. C. Munger, District Judge."

The appellees earnestly ask that the decision of the district court be affirmed.

Respectfully submitted,

O. S. SPILLMAN, *Attorney General of Nebraska.*

GEO. W. AYRES, *Asst. Atty. Gen'l of Nebraska.*

HUGH LAMASTER, *Asst. Atty. Gen'l of Nebraska.*

Solicitors for Appellees.

APPENDIX .

Majority opinions in this cause in the United States District Court:

JUDGE LEWIS announced the decision of the Court, as follows:

We think a brief statement coupled with what has already been said in the railroad tax case will sufficiently express the reasons for our conclusions in those cases.

We gave it as our tentative opinion during the progress of the argument that where the state statutes provide a procedure for the settlement of the complaints of a tax payer on account of his contention that his property has been assessed too high, that that procedure should be exhausted under the authorities before resort to a court of equity is had for the purposes of obtaining the extraordinary writ of injunction. We are disposed now to adhere to that tentative view which we held then. Mr. Judson on Taxation in considering this question, Section 623, says:

> "When the question involved is not the validity of the tax in toto, but wholly the amount of the assessment, alleged to be excessive, either on account of overvaluation absolute or relative, or failure to make a required deduction, application must first be made to the revising or equalizing board appointed by the state to hear and act on complaints of excessive or erroneous assessments."

That was done here.

> "In the absence of statute, there is no jurisdiction in the courts to review the discretion of such tribunals, that is, a court of equity is not a court of errors to review their decisions. But the procedure established by the State for the correction of assessments, whatever it is, must be followed, if open to the taxpayer, before he will be allowed to enjoin the alleged excessive assessment. If the state practice allows a judicial review,

of the findings of equalizing boards upon writ of *certiorari* or other statutory procedure, resort must be had to the remedy thus provided."

The reasons for this rule have been many times stated. They are set out at length by the Supreme Court in Pittsburg Railway against the board of Public Works. It is impossible for the assessing and valuation officers to know and fix the amount of revenue for all public purposes, schools, county, and state until valuations are determined so that the rate of levy may be fixed, and it is generally recognized as a principle that that should be done as early and as expeditiously as possible so that public institutions and the state government itself, will not find itself without funds to administer its public functions. Otherwise, if those questions are open the taxpayers, after the amount of taxes required have been ascertained and valuation fixed and the rate of levy made cannot go into a court of equity and enjoin collection of public revenue, and in this case, even to grant what the complaining roads request would leave several hundred thousand dollars of public revenue for the maintenance of schools and county government and state government uncollectible, and force its obligations in the nature of warrants, perhaps to go to discount.

It is for the purpose of avoiding these contingencies and these results which would necessarily follow that the different states have provided for speedy ascertainment and fixing of the valuation and the rate of taxation to be levied. That is thoroughly commented on and set forth in this Pittsburg Railway case. That case arose over the assessment of a bridge. It was a controversy as to whether or not the bridge should have been separately valued and assessed as a structure or building under the statute of the state, or whether, as contended by the railway company it should have been taken in and counted as part of the railway.

Under the statutes of the state the railroad company was given the right to appeal to the State court, the state trial court. It is true that the statute provided that the parties, the board of public works on the one hand and the railway company on the other hand, could both have been heard fully in that court and could have adduced evidence there. They were given that right but the railway company did not avail itself of that right given by the state statute. It stood by and later went into a court of equity and sought a writ of injunction against the collection of the tax on the bridge assessed as a bridge or separate structure. After a full consideration the Supreme Court concluded:

> "The plaintiff, upon its own showing, having made no attempt to avail itself of the adequate remedies provided by the statute of the state for the review of the assessment it complains of, is not entitled to maintain this bill."

A number of authorities are referred to in the case in the 280 Federal, Mo. Pacific Railway Company against Conway and Vilona Road District, which bear out the principles that we are now considering, and which were enforced in that case, one principle being as we understand it, thoroughly established. The only inquiry left in connection with it is whether or not the state provided a remedy for the determination and settlement of the controversy that is presented in this bill. That is to say, that the railway companies' properties were assessed too high in comparison with the valuation of farming lands. The statute was repeatedly read during the argument and commented on. Its language leaves its purpose plain and it cannot be obscure. It provided that if the state board has acted in these questions of assessment and equalization which it has full power to adjust, a writ of error may be sued out to the supreme court, evidently for the purpose of correcting errors, if any, made by the board of equalization.

Similar statutes in this state dealing with county boards of assessment have been passed on by the Supreme Court of Nebraska, and it is held in the Third Nebraska that the county board of equalization when it acts beyond its authority, or unjustly to the tax payer is subject to be reviewed in that respect in the Supreme court, and in that case, *Railway Company* v. *Washington County*, 3 Neb., the audit of the county board was reversed, set aside and vacated. A case of similar nature is *McGee, et al.*, v. *State ex rel. No. Am. Cattle Co.*, 32 Neb. 149. A case treating with the power of the Supreme Court as to the action of the State Board is found in 81 Neb. 139, *State ex rel. Union Pacific Railroad Company* v. *the Board of Equalization.* Now, in that case, construing the statute of this state, the Supreme Court held that this writ of error which the tax payer was entitled to sue out might properly embody such proceedings as we have here, but that the tax payer could have gone before that board and requested of it that it rule on specific questions, as was requested by the Union Pacific Railway that it rule specifically as to the value of the railway property on the basis of stocks and bonds, and that the rule specifically on other questions determining or aiding in the determination of the value of the properties. That request was made before the State Board and the State Board declined specifically to rule on those questions. The railway company then sought a writ of mandamus. Supreme Court reverting to the statutes of this state and calling attention to the fact that the railway company had the right to sue out a writ of error and have the action of the state board corrected. The court then said that if the railroad company wanted to test whether it was the duty of the board to rule upon those specific questions presented to it by the railroad company it could have embodied in its bill of exceptions provided for under the statute the action of the commission in refusing specifically to rule upon those different questions, and could thus have brought the action of the board, in declining to rule upon

those questions, before the supreme court for consideration, and having had that remedy clearly given it under the statute it could not avail itself of the extraordinary remedy of mandamus.

Now, it seems to us this construction of the state statute, not only this statute that was commented on, but other sections of the Nebraska statute with reference to writs of error, must necessarily be a determination and construction by the supreme court of its powers in these tax proceedings to take such action on writ of error to the board as are necessary to correct the very errors complained of now here in a court of equity. Now, that would have been a speedy remedy. The statute says that when such a writ of error is sued out that its consideration shall have precedence in the supreme court. That could have been done. We cannot assume that the state board of equalization would not have followed the opinion of the Supreme Court if it had found that there was an unequal adjustment of taxes on account of farm lands being assessed too low and the railroads too high, as is complained of here. The Supreme Court could not have considered the question that was presented to the board and embodied in the bills of exceptions without announcing its views on the very questions that are presented to this court.

We must assume that the state board of equalization would have abided by the conclusions of the supreme court and have corrected the errors now complained of. If that had been done it would have been in time in the interest of the public to finally determine the question of the rate of taxation and adjust the rate in keeping with the change in valuations if the plaintiffs' contention here is correct, and thus avoid the very thing that the authorities say is intended to be avoided by these provisions for the final determination of these questions. Now, of course, if the Supreme Court had refused to order a modification or any change in the action of the board, the railroad companies,

having thus exhausted all remedies under the revenue statutes for the correction of these claimed errors and it could now show here that it has been unjustly treated in bearing this burden of taxation, it would have then been open to it to come into this court or into a state court of equity to obtain, and would have been entitled on such a showing to the remedy which it now seeks. Not having done so we are of the opinion that it is not entitled to now maintain this procedure, and we hold that a temporary writ should be denied.

Concurring opinion, MUNGER, District Judge:

I concur in the denial of the temporary injunction. If in the processes of making an assessment for taxes an appeal is allowed by the state statute either to the board or to a court which can ascertain and fix the true valuation and assessment, there is such an adequate remedy provided as precludes relief by a suit in the United States Court for an injunction against the enforcement of the assessment unless the appeal provided by the state statute has been pursued.

172 U. S. 32.
188 U. S. 681.
258 U. S. 122.
257 U. S. 547.
232 Fed. 579.
233 Fed. 235.
280 Fed. 401.
240 Fed. 202.

If such an appeal to the State Court is required because it may fix an assessment that is valid, then a proceeding in error, that is provided by the state statute is also an adequate remedy where the court in such error proceedings has the power to set aside the order making an erroneous assessment and to direct the assessing board to reach a different result, because the remedy is as effectual if a valid assessment is made by the assessing board acting

under the directions of the court as if the court had made such an assessment upon the appeal. Under the construction that has been placed upon the statutes of Nebraska of the same general character as the portion of 5901 of the compiled statutes of Nebraska, which provides for an proceeding in error to the supreme court of Nebraska, the supreme court has held that the state courts have the power in error proceedings from the actions of boards exercising powers of this nature to review the actions of such board and vacate and set aside their action.

3 Neb. 30-44.

32 Neb. 149-154.

81 Neb. 139-143-144.

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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

No. 219

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

Appellant,

vs.

W. H. OSBORNE, JR., as Tax Commissioner of the State of Nebraska, GILBERT E. HAASE, as County Treasurer, Buffalo County, Nebraska, *et al.*,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

REPLY BRIEF FOR APPELLANT

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1. Federal Courts do not except from equitable jurisdiction suits for the protection of a non-resident to prevent the collection of that proportion of its tax levied upon discriminatory and prejudicial assessment, if more than $3,000 be involved in the controversy, and a well-recognized ground for equitable jurisdiction be evident 3

2. The record in this case presents solely a question of law. The discussion in appellee's supplementary brief concerning the value of appellant's property within the State of Nebraska is not sustained by the evidence on that subject 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

No. 219

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

Appellant,

vs.

W. H. OSBORNE, JR., as Tax Commissioner of the State of Nebraska, GILBERT E. HAASE, as County Treasurer, Buffalo County, Nebraska, *et al.*,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

REPLY BRIEF

ARGUMENT

I.

Appellee's supplementary brief asserts in effect (pp. 2-3) that suits to restrain the collection of taxes laid upon intentional, prejudicial and discriminatory assessment of a non-resident's property are excepted from the jurisdiction of a Federal Court on the equity side.

Appellant's former brief discusses chiefly the subject of jurisdiction because the order appealed from was made upon jurisdictional grounds solely (p. 2 former brief). We did not anticipate an argument to the effect that there can be no equity in a taxpayer's prayer for relief from the collection of taxes, no matter what the facts may be.

On this subject, District Judge Clark, in Railroad & Telephone Companies vs. Board of Equalization, 85 Fed. 302, 320, said:

> Whether the constitution or the supreme law of the land has been violated is a question for the judiciary, and not the legislative department, and an inquiry like this can no more be shut off indirectly than it can directly. If we could suppose the case of a Board of Equalization making a superficial or perfunctory showing of equalization no one would venture, as I think, to claim that this would exclude a judicial investigation, as to whether, in effect, there was nevertheless an oppressive discrimination in respect of a large class of property.

So also District Judge Elliott's statement in Chicago, R. I. & P. Ry. Co. vs. Rist, 282 Fed. 364, 371.

> The remedy at law must be a remedy on the law side of the Federal Court, not a

> remedy in the State Courts of South Dakota. In each of these cases where there is a diversity of citizenship, this Court of Equity will not deny the plaintiffs relief because there may be a remedy in the courts of the State; for the reason that the non-resident is not required to subject himself to jurisdiction of the courts of the State in order to obtain relief.

These cases, together with many other citations, some relating to tax cases, but more to other controversies, may be found on pages 28 and 30 of our former brief. These cases do but declare that a chancellor may have a duty to perform in protecting a taxpayer subjected to systematic intentional and prejudicial overvaluation of his property for the purposes of taxation, as compared with the valuation of other taxpayers' property in the community where the non-resident's property is situated. See also the citation and discussion on pages 20 to 25 of our former brief.

EVIDENCE RELATING TO THE VALUE OF APPELLANT'S PROPERTY WITHIN THE STATE OF NEBRASKA.

Appellee's arguments and statements on pages 3, 19 and 29 of their first brief filed plainly concede and state that they rely solely upon questions of law to sustain the order in their favor from which this appeal has been prosecuted. But on

page 2 of their supplemental brief appellees' assume to discuss the evidence with respect to the value of appellant's property within the State of Nebraska. If the Court agrees with us that the discussion is beside the mark, the remainder of this brief will be as irrelevant as those comments; but should the Court desire to pursue that proposition it is possible from a consideration of those comments solely that an inference might be derived that the value of the Burlington property in Nebraska in 1922 exceeded $200,000,000. The comments emphasize Exhibits 35 (Tr. 158) and Mr. Morgan's testimony (Tr. 100).

The exhibit is a tabulated estimate of the Burlington's engineers of the value of the various items relating to the physical value of the Railroad Company's property in that State July 1, 1909; it also reveals deductions made by the Commission from those estimates and the present value of that property as of July 1, 1909. Amongst the larger deductions from the estimates are:

For right-of-way and station grounds...	$11,603,571.74
Ballast	3,138,652.82
Track laying and surfacing	2,662,164.80
Interest	22,759,661.89
Discount	13,303,704.26

The sum of the deductions is $80,218,074.81, so that making allowance for depreciation the value of the Burlington's property in Nebraska July 1, 1909, including all property used in the construction and operation of its railroad in that State, in-

cluding also expenses, stationery and printing, insurance, taxes, interest, organization, commission, discount, stores and supplies, contingencies and unexplained items, is $104,502,614.22, and not $200,000,000.

The $18,000,000 referred to in the comments is not confined to "extensions, additions and betterments," but includes as well, equipment, without depreciation.

A report of the State Railway Commission dated July 1, 1911, excluding abandoned right-of-way and lines, states the value of the Burlington's property in Nebraska as follows:

Subject	Reproduction Cost New	Present Value	Present Value New Formula
(a) Mkt. Val. Land only	$128,730,333	$108,242,493	$103,592,129
(b) Inc. Acq. and Rt.-of-way	135,850,484	115,362,644	110,713,897

(Tr. 186, 187.)

On page 634 of the 1914 report to the Governor by the Nebraska State Railway Commission, the physical valuation of appellant's property in Nebraska July 1, 1913, is stated to be, according to one formula, $109,888,797; and according to another formula, $104,994,348. (Tr. 190.)

The finding of the State Railway Commission in their official report to the Governor July 1, 1911, reveals the value of the Railroad Company's property in Nebraska July 1, 1911, $103,592,129. (Tr. 86, 87.)

Mr. Morgan, appellant's assistant auditor, formerly Examiner of Accounts for the Interstate

Commerce Commission, testified to four recognized formulae, useful in determining the value of railroad property. As applied to the Railroad Company's property in Nebraska, the result is as follows:

1. Value of stocks and bonds for the system yielding	$497,827,260.00
Deducting non-operating property	73,677,476.14
(Tr. 99.)	$424,149,783.86
2. Investment in road and equipment per book accounts	$515,760,467.89
3. Physical value found by Nebraska State Railway Commission July 1, 1913	104,994,348.00
Plus money expended subsequent to that valuation for extensions, additions and betterments in Nebraska	10,388,405.00
Plus investment for equipment allocated to Nebraska since July 1, 1913	7,398,708.32
(Tr. 100)	$122,781,461.43

This does not include depreciation,

4. The average net railway operating income of appellant in the State of Nebraska for the five-year period ending December 31, 1921	$6,982,743.00
Capitalized at seven per cent	99,782,043.00
Average of the four bases produced a value for Nebraska	$108,651,522.00
Or per mile	37,969.00

22.56 per cent of the system's valuation is allocated to Nebraska, upon an average of four methods applied to a period of five years, commencing with 1917.

Nebraska Proportion of System	*1917 to 1921, Incl.*
All track mileage	26.63%
Car and locomotive mileage	21.15%
Tons and passengers one mile	18.85%
Gross Operating Revenues	23.65%
Average of the four (P. 99 Rec.)	22.56%

There are 2,861 miles of Burlington roadway in Nebraska, a very considerable fraction of which is branch mileage (Tr. 178). These lines are laid through or into 72 of the 91 counties in the State, and traverse the semi-arid regions and the vast territory suitable solely for grazing.

Assuming $100,000,000 to be the value of the Burlington's Nebraska property, the valuation per mile would be $34,945.00. (Tr. 29.)

Assuming the Burlington's Nebraska property to be worth its assessed value for 1922, $137,589,-782, its valuation per mile would be $48,000.00.

Assuming that it was assessed at but 65% of its actual value as intimated in the comments referred to, the actual value would be $211,676,-587.00.

Per mile for Nebraska, $79,480.

Whereas the value of its total investment in road and equipment for the entire system up to December 31, 1921, as shown by Exhibits 36 and 37, introduced by appellees, was but $515,760,467.00, its investments in stocks and bonds of affiliated companies on that date were $42,883,966.00.

Its current assets on that date were largely balanced by current liabilities. (Tr. 158.)

Its average value per mile based on these items would be but $62,270.

The Burlington's total mileage operated in all of the States December 31, 1921, was 13,394 miles, of which it owned 8,900 miles (Tr. 72). These States include Illinois, Minnesota, Iowa and Missouri, where there is a much greater density of population, and a much greater traffic than in Nebraska. The inference will not be permitted that the State Board assessed the Burlington's property at less than its "*full actual value.*" (Tr. 107, 114, 123.)

The formula for the 1922 assessment reveals that to the 1921 valuation was added from the net earnings for that year, $5,834,057, to constitute the $137,589,782, valuation for 1922. (Tr. 122.) This in face of the fact that all of the net earnings for 1921 were paid out in dividends, fixed charges, etc., before the close of that year.

It is most respectfully submitted that appellant's supplementary brief brings forward no suggestions of merit to aid in sustaining the order assailed by the appeal in this case.

TIMOTHY BYRON CLARK,
JESSE L. ROOT,
J. W. WEINGARTEN,
J. C. JAMES,
Counsel for Appellant.

BRUCE SCOTT,
Of Counsel.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1923

No. [redacted] 224

CHICAGO AND NORTHWESTERN RAILWAY COMPANY, APPELLANT,

vs.

W. H. OSBORNE, JR., AS STATE TAX COMMISSIONER OF THE STATE OF NEBRASKA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED FEBRUARY 20, 1923.

(29,413)

(29,418)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 863.

CHICAGO AND NORTHWESTERN RAILWAY COMPANY, APPELLANT,

vs.

W. H. OSBORNE, JR., AS STATE TAX COMMISSIONER OF THE STATE OF NEBRASKA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

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1 Be it remembered, that on the 24th day of November, 1922, a Petition was filed in the Clerk's office of said District Court, which said Petition is in words and figures following, to-wit:

492 Equity.

1922 Tax Suit.

IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA, OMAHA DIVISION.

CHICAGO AND NORTH WESTERN RAILWAY COMPANY, Plaintiff,

vs.

W. H. OSBORNE, JR., as State Tax Commissioner of the State of Nebraska; H. C. Haverly, as County Treasurer, Adams County, Nebraska; Guy E. Thornton, as County Treasurer, Antelope County, Nebraska; R. M. Hutchinson, as County Treasurer, Boone County, Nebraska; D. J. Tomek, as County Treasurer, Boyd County, Nebraska; Mamie McAndrews, as County Treasurer, Brown County, Nebraska; Philip A. Tomek, as County Treasurer, Butler County, Nebraska; W. E. Haley, as County Treasurer, Cherry County, Nebraska; Harry J. Platz, as County Treasurer, Clay County, Nebraska; George W. Smith, as County Treasurer, Colfax County, Nebraska; Henry Schwinck, as County Treasurer, Cuming County, Nebraska; Belle Quinn, as County Treasurer, Dawes County, Nebraska; Joseph Roberts, as County Treasurer, Dodge County, Nebraska; M. L. Endres, as County Treasurer, Douglas County, Nebraska; Lester S. Donisthorpe, as County Treasurer, Fillmore County, Nebraska; R. E. Gallagher, as County Treasurer, Holt County, Nebraska; Harry E. Toof, as County Treasurer, Hamilton County, Nebraska; Edward Matthews, as County Treasurer, Knox County, Nebraska; William Albers, as County Treasurer, Lancaster County, Nebraska; P. W. Ruth, as County Treasurer, Madison County, Nebraska; A. L. Brande, as County Treasurer, Pierce County, Nebraska, Belle Galley, as County Treasurer, Nuckolls County, Nebraska; A. J. Kriycki, as County Treasurer, Platte County, Nebraska; J. C. Wallace, as County Treasurer, Rock County, Nebraska; George F. Bartek, as County Treasurer, Saunders County, Nebraska; C. E. Morefield, as County Treasurer, Seward County, Nebraska; Bruce H. Hewitt, as County Treasurer, Sheridan County, Nebraska; Fred W. Meyer, as County Treasurer, Sioux County, Nebraska; E. B. Roper, as County Treasurer, Thayer County, Nebraska; R. G. Allen, as County Treasurer, Washington County, Nebraska; Frank L. Propst, as County Treasurer, York County, Nebraska, and the successors in office of each of said defendants, Defendants.

2 **Petition.**

[Filed Nov. 24, 1922.]

To the Honorable Judge of the District Court of the United States, in and for the District of Nebraska:

Comes now the plaintiff, and for cause of action alleges:

I.

That the plaintiff is a corporation — and existing under and by virtue of the laws of the State of Illinois, having its principal office and place of business at the City of Chicago, in Cook County, in said State of Illinois, and is a citizen and resident of said State of Illinois, and owns and operates lines of railroad in the State of Illinois, Iowa, Wisconsin, Michigan, South Dakota, Nebraska, and other states, and is engaged in interstate commerce.

II.

That the defendant, W. H. Osborne, Jr., is the duly appointed, qualified and acting Tax Commissioner of the State of Nebraska, and is a citizen and resident of said State of Nebraska; that H. C. Haverly is the duly elected, qualified and acting County Treasurer of Adams County, Nebraska, and is a citizen and resident of the State of Nebraska; that Guy E. Thornton is the duly elected, qualified and acting County Treasurer of Antelope County, Nebraska, and is a citizen and resident of the State of Nebraska; that R. H. Hutchinson is the duly elected, qualified and acting County Treasurer of Boone County, Nebraska, and is a citizen and resident of the State of Nebraska; that D. J. Tomek is the duly elected, qualified and acting County Treasurer of Boyd County, Nebraska, and is a citizen and resident of the State of Nebraska; that Mamie McAndrews is the duly elected, qualified and acting County Treasurer of Brown County, Nebraska, and is a citizen and resident of the State of Nebraska; that
3 Philip A. Tomek is the duly elected, qualified and acting County Treasurer of Butler County, Nebraska, and is a citizen and resident of the State of Nebraska; that W. E. Haley is the duly elected, qualified and acting County Treasurer of Cherry County, Nebraska, and is a citizen and resident of the State of Nebraska; that Harry J. Platz is the duly elected, qualified and acting County Treasurer of Clay County, Nebraska, and is a citizen and resident of the State of Nebraska; that George W. Smith is the duly elected, qualified and acting County Treasurer of Colfax County, Nebraska, and is a citizen and resident of the State of Nebraska; that Henry Schwinek is the duly elected, qualified and acting County Treasurer of Cuming County, Nebraska, and is a citizen and resident of the State of Nebraska; that Belle Quinn is the duly elected, qualified and acting County Treasurer of Dawes County, Nebraska, and is a citizen and resident of the State of Nebraska; that Joseph Roberts is the

duly elected, qualified and acting County Treasurer of Dodge County, Nebraska, and is a citizen and resident of the State of Nebraska; that M. L. Endres is the duly elected, qualified and acting County Treasurer of Douglas County, Nebraska, and is a citizen and resident of the State of Nebraska; that Lester S. Donisthorpe is the duly elected, qualified and acting County Treasurer of Fillmore County, Nebraska, and is a citizen and resident of the State of Nebraska; that R. E. Gallagher is the duly elected, qualified and acting County Treasurer of Holt County, Nebraska, and is a citizen and resident of the State of Nebraska; that Harry E. Toof is the duly elected, qualified and acting County Treasurer of Hamilton County, Nebraska, and is a citizen and resident of the State of Nebraska; that Edward Matthews is the duly elected, qualified and acting County Treasurer of Knox County, Nebraska, and is a citizen and resident of the State of Nebraska; that William Albers is the duly elected, qualified and acting County Treasurer of Lancaster County, Nebraska, and
4 is a citizen and resident of the State of Nebraska; that P. W. Ruth is the duly elected, qualified and acting County Treasurer of Madison County, Nebraska, and is a citizen and resident of the State of Nebraska; that A. L. Brande is the duly elected, qualified and acting County Treasurer of Pierce County, Nebraska, and is a citizen and resident of the State of Nebraska; that Belle Galley is the duly elected, qualified and acting County Treasurer of Nuckolls County, Nebraska, and is a citizen and resident of the State of Nebraska; that A. J. Krivcki is the duly elected, qualified and acting County Treasurer of Platte County, Nebraska, and is a citizen and resident of the State of Nebraska; that J. C. Wallace is the duly elected, qualified and acting County Treasurer of Rock County, Nebraska, and is a citizen and resident of the State of Nebraska; that George F. Bartek is the duly elected, qualified and acting County Treasurer of Saunders County, Nebraska, and is a citizen and resident of the State of Nebraska; that C. E. Morefield is the duly elected, qualified and acting County Treasurer of Seward County, Nebraska, and is a citizen and resident of the State of Nebraska; that Bruce H. Hewitt is the duly elected, qualified and acting County Treasurer of Sheridan County, Nebraska, and is a citizen and resident of the State of Nebraska; that Fred W. Meyer is the duly elected, qualified and acting County Treasurer of Sioux County, Nebraska, and is a citizen and resident of the State of Nebraska; that Robert Gratton is the duly elected, qualified and acting County Treasurer of Stanton County, Nebraska, and is a citizen and resident of the State of Nebraska; that E. B. Roper is the duly elected, qualified and acting County Treasurer of Thayer County, Nebraska, and is a citizen and resident of the State of Nebraska; that R. G. Allen is the duly elected, qualified and acting County Treasurer of Washington County, Nebraska, and is a citizen and resident of the State of Nebraska; that Frank L. Propst is the duly elected, qualified and acting County Treasurer of York County, Nebraska, and is a citizen and resident of the State of
5 Nebraska, and each and all of the defendants are agents of the State in the performance of the respective duties of their offices.

III.

That this is a suit of a civil nature in equity involving an amount, exclusive of interest and costs, exceeding the sum or value of Three Thousand and no/100 Dollars ($3,000.00), as to each defendant, and is a controversy wholly between the plaintiff, a citizen and resident of the State of Illinois, and the defendants, each and all of whom are citizens and residents of the State of Nebraska.

IV.

That the claims and causes of action involved in this suit arise under and involve the construction and application of the Fourteenth Amendment to the Constitution of the United States, providing that no person shall be deprived by any state of its property without just compensation nor denied the equal protection of the law, and plaintiff alleges that it claims protection of said Amendment to the Constitution of the United States against the unlawful acts of the defendants hereinafter set forth.

V.

Plaintiff further states to the Court that this is a suit in equity to enjoin the collection of illegal taxes against the plaintiff; that said taxes are illegal because the property of the plaintiff has been valued for taxing purposes at more than its true value, while the property of all other tax-payers in the state, and particularly real estate, has systematically and intentionally and continuously been valued at only a fraction of its true value, thereby resulting in a discrimination against the plaintiff and depriving the plaintiff of equal protection of the law in violation of the Constitution of the State of Nebraska and the laws of the State, and in violation of the Fourteenth
6 Amendment to the Constitution of the United States.

VI.

Plaintiff further alleges that it is provided by Section 1, Article 8, of the Constitution of Nebraska:

"The necessary revenue of the State and its governmental subdivisions shall be raised by taxation in such manner as the legislature may direct; but taxes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises, and taxes uniform as to class may be levied by valuation upon all other property. Taxes, other than property taxes, may be authorized by law. Existing revenue laws shall continue in effect until changed by the legislature."

It is further provided by Section 4, Article 8, of the Constitution of Nebraska:

"The legislature shall have no power to relieve or discharge any county, city, township, town or district whatever, or the inhabitants

thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, or due any municipal corporation, nor shall commutation for such taxes be authorized in any form whatever."

It is provided by Section 28 of Article 4 of the Constitution of Nebraska:

"A Tax Commissioner shall be appointed by the Governor with the advice and consent of the Senate. He shall have jurisdiction over the administration of the revenue laws of the State, and together with the Governor, Secretary of State, State Auditor and State Treasurer, shall have power to review and equalize assessment of property for taxation within the State. He shall have such other powers and perform such other duties as the legislature may provide. His term of office and compensation shall be as provided by law."

7 It is provided by Section 5820, Compiled Statutes of Nebraska, 1922:

"Actual valuation. All property in this state, not expressly exempt therefrom, shall be subject to taxation, and shall be valued and assessed at its actual value. 'Actual value,' as used in this act, shall mean its value in the market in the ordinary course of trade."

Section 5822, same Statute, provides:

"Real property taxes—first lien. Taxes on all real property shall be a first lien thereon from and including the first day of December of the year in which they are levied until the same are paid, except general city taxes on real property within the corporate limits of cities of the metropolitan class, which shall be a first lien thereon from and including the first day of May following the levy, until the same are paid."

Section 5823, same Statute, provides:

"Personal property taxes—first lien. Taxes assessed upon personal property shall be a first lien upon the personal property of the person to whom assessed from and after the first day of November of the year in which they are assessed, until paid."

Section 5825, same Statute, provides:

"Taxes—first lien. All general taxes due the state and its governmental subdivisions shall be a first lien on the real estate on which levied, and takes priority over all other encumbrances and liens thereon."

Sections 5827 to 5832 prescribe the duties of the Tax Commissioner and require him, in cases of illegal or unfair assessment by county assessors or counties, to cause the property to be re-assessed—

"To the end that all property in such district or county shall be assessed equitably as compared with like property in such district, county or state."

8 Section 5839, same Statute, provides:

"Railroad assessment. The state board of equalization and assessment is hereby empowered, and it is made its duty, to assess all property of the railroads and railroad corporations in the State of Nebraska; Provided, however, that all machine repair shops, general office buildings, store houses, and also all real and personal property outside of right-of-way and depot grounds, as of and belonging to any such railroad and telegraph companies, shall be listed for purposes of taxation by the principal officers or agents of such companies with the assessors of any precinct of the county where such real or personal property may be situated, in the manner provided by law for the listing and valuation of real and personal property."

Section 5840, same Statute, provides:

"Railroad assessment—time of. The board on the first Monday of May of each year shall proceed to ascertain all property of any railroad company owning, operating or controlling any railroad or railroad service in this state, which for the purpose of assessment and taxation, shall be held to include the main track, spur tracks, warehouse tracks, roadbed, and super-structures thereon, and all machinery, rolling-stock, telegraph lines and instruments connected therewith, all material on hand and supplied, provided for operating and carrying on the business of such road, in whole or in part, together with franchises and all other property of such railroad company used or held for the purpose of operating its road, and appraise and assess the same as personal property as herein provided."

Sections 5841 to 5846, same Statute, prescribe the kind of reports to be made to the State Board of Equalization by Railway Companies, and plaintiff alleges that it made such report in accordance with law.

9 Section 5847, same Statute, provides:

"Board returns to county clerk—trackage. The state board of equalization and assessment, after having valued and assessed all the railroad property in this state in accordance with the provisions of this article, shall immediately make return to the county clerk of each and every county in which any portion of the railroad property as designated in this article may be located, to be used as the basis of levy for the county and governmental subdivisions through which any railroad or part thereof may extend."

Sections 5859 to 5874 provide the method of equalization by the various county boards of equalization and as to the work of said county boards of equalization it is provided by Sections 5875 and

5876 that the State Board of Equalization shall review the work of the county boards of equalization, and as to railroad companies and the values of their property fixed by the county boards of equalization so far as the same lies within cities and villages:

"The board shall equalize and so fix the values of the various properties returned that the companies assessed shall stand, as near as may be, upon a basis of equality with other taxpayers in the same cities and villages respectively."

Section 5880, same Statute, provides:

"Proceedings regular and valid. The proceedings of the assessors and of the board, and the action of each of them in determining the assessable value of the property of the companies under the provisions of this article, shall be presumed to be regular and valid, and the determination of the assessors and of the board shall not be impaired, vitiated or set aside upon any grounds not affecting the substantial justice of the tax. The provisions of this article prescribing a date or period at or within which any act shall be performed or determination shall be made by the board, as well as all other acts, looking to the orderly conduct of the business of any of the officers herein provided for, shall be deemed directory only. No tax assessed or levied under the provisions of this article shall be held to be invalid, in whole or in part, on account of being assessed in the wrong name, or on account of the manner of listing, assessing, apportioning or valuing any property of any company, or on account of the method or manner of ascertaining and determining the assessable value of the property of any company by any assessor or the board, unless such company shall show that gross injustice has resulted therefrom."

Section 5881, same Statute, provides:

"Suit to set aside assessment—method of procedure. In any action, suit, or proceeding brought by such company, or by any creditor, stockholder or bondholder thereof, to set aside, restrain or postpone the payment or collection of any tax levied upon the property of any company under the provisions of this article, no injunction, order or writ to enjoin or restrain the payment or collection of the tax shall issue or be continued in force, unless such company shall pay to the city or village whose taxes are affected thereby, the amount of taxes which the court shall determine primarily to be justly and equitably due from such company. Such primary determination shall be made by the court in which the action, suit or proceeding is pending, upon motion summarily and without delay. In case the amount of tax justly and equitably due from the company shall be finally determined to be less than the amount so paid, the excess shall be refunded to such company by direction of the court."

VII.

Plaintiff further alleges that in accordance with said Statutes of Nebraska plaintiff made report to the State Board of Equalization and to the county assessors of the various counties strictly in accordance with law; that thereupon during the month of April, 1922, the State Board of Equalization and Assessment fixed the valuation of plaintiff's property in Nebraska for taxing purposes; said order being in words and figures following, to-wit:

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"Resolved, that we, the State Board of Equalization and Assessment, in regular session held for the purpose of valuing and assessing the railroads in the State of Nebraska for the purpose of taxation of their property in the said state, and having given due and full consideration to the returns furnished said Board by the several railroad companies, and having taken into consideration the main track, side track, spur track, warehouse tracks, roadbed, right of way and depot grounds, and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand and supplies, moneys, credits, franchises and all other property of said railroad companies, and having taken into consideration the gross and net earnings of said railroads, the total amount expended in operation and maintenance, the dividends paid, the capital stock of each system or road and the market value thereof, and the total amount of secured and unsecured indebtedness and from all the information which we are able to obtain, do hereby ascertain, appraise, fix and assess for the purposes of general taxation the full actual value of the property of each of the several systems or companies in the State of Nebraska, as hereinafter recited.

Chicago and North Western Railway Company, $38,714,373.00.

That said State Board of Equalization and Assessment fixed the valuation per mile of plaintiff's line of railroad in Nebraska on the basis of 1,062.56 miles at $36,475.00; that thereafter the plaintiff, pursuant to said Statutes of Nebraska, appeared before the State Board of Equalization at its meeting on the third Monday in July, 1922, complaining that said valuation fixed by the State Board of Equalization was excessive and asking to have same reduced to the true value of said property of the plaintiff and that the valuation

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to be certified by said Board of Equalization to the various county clerks be made to conform to the percentage of actual value which is enjoyed by real estate throughout the State of Nebraska for taxing purposes and which plaintiff alleges is on the average only about 60 per cent of true value, but plaintiff alleges that the State Board of Equalization denied to plaintiff relief in the premises and certified to the various county clerks, the valuation of plaintiff's property as fixed by the said State Board of Equalization and the valuation per mile of plaintiff's property as so fixed, and the said county clerks and county treasurers, defendants herein, are applying

said valuation per mile to the levies provided by law for raising revenue, and said county treasurers will force plaintiff to pay taxes on said grossly excessive and unlawful valuation unless restrained by order of this court.

VIII.

Plaintiff further alleges that the value of plaintiff's property in the State of Nebraska does not exceed $30,000,000.00 and that the value per mile of plaintiff's property does not exceed $30,000.00 per mile, and that the valuation of $38,714,373.00 for plaintiff's property, as fixed by said State Board of Equalization, is excessive by at least $8,714,373.00; that the valuation per mile of $36,475.00, as fixed by said State Board of Equalization, is excessive by at least $6,475.00 per mile.

IX.

Plaintiff further alleges that the State Board of Equalization and the several county assessors of the State of Nebraska have for more than two years assessed and valued farm land in the State of Nebraska at much less than the true value thereof; that during the year 1920 farm lands in the State of Nebraska, which constitute more than 90 per cent of the value of all property in the state, except railroads, was fixed for taxing purposes by the State Board of
13 Equalization and by the county assessors at only 68 per cent of the true value of such farm land; but plaintiff alleges that for the year 1921 the valuation of farm lands in the State of Nebraska, as returned by the county assessors of the several counties, and as adjusted and equalized by the State Board of Equalization, was fixed at only about 47 per cent of the true value of said farm land; and for the year 1922 at only about 60 per cent of the true value of said farm lands; and in that behalf plaintiff alleges that the fixing of the valuation of farm lands for taxing purposes at only about 60 per cent of the true value thereof by the State Board of Equalization was the result of a systematic, intentional, notorious and continuous under-valuation of said farm lands by the several county assessors and the State Board of Equalization for taxing purposes; that said intentional and systematic under-valuation of farm lands was done for the purpose of relieving the said farm lands of their just share of the taxing burden in the state; and in that behalf plaintiff alleges that the said defendant, Osborne, as Secretary of the State Board of Equalization for the year 1920, published a statement showing the result of the valuation by the county assessors as equalized by the State Board of Equalization with respect to farm lands as follows:

"The abstracts of assessment have been received covering lands and improvements for all the counties except Arthur. The returns show that the precinct assessors and other local assessing officials throughout the state have placed a value on lands and improvements which average over 68 per cent of the average value as established by the ratio process based on actual sales. It would seem only fair

and just that the State Board would accept this average valuation established by almost 2,000 precinct assessors and in equalizing the land and improvements between counties, maintain, as nearly
14 as possible, for each county, an assessed actual valuation of 68 per cent of the actual value as established by the ratio process."

And plaintiff alleges and charges that for the year 1920 the valuation of farm lands for taxing purposes in Nebraska was equalized and fixed by the State Board of Equalization at only 68 per cent of the true value thereof in violation of the Constitution and Laws of the State of Nebraska, as above set forth.

Plaintiff further alleges and charges that the adoption of said valuation of 68 per cent for the year 1920, on real estate was intentional and deliberate and pursuant to concerted action by the State Board of Equalization and the several county assessors and in that behalf alleges and charges that the said State Board of Equalization made and published a statement of the result of its action as a Board of Equalization for the year 1920 as follows, to wit:

"In the matter of equalization between counties, the State Board has adhered to the early announced plan of accepting for valuation purposes the average value placed on lands and improvements by the precinct and county assessing officials. For equalization between counties, the value returned by the assessing officials of each county has been compared with the average real value, as established by the ratio process, based on bona fide sales from July 1, 1918, to July 1, 1919. The equalization of the counties on the basis of the sale average was requested by the Board at the meeting of the assessing officials of the counties held July 20, 1920. The ratio process,
15 used in correcting the sale averages, is the plan used by Wisconsin for a number of years, and Minnesota and other states have adopted the same plan.

"Under this plan of equalization, the State Board has the combined judgment as to value, of the assessing officials of the counties and of the buyers and sellers of real estate for a year's period. The year taken was previous to the land boom and does not cover the period of the highest prices.

"The valuations as returned by the County Boards averaged 68 per cent of the real value, as determined by the ratio process, and the State Board adopted this 68 per cent as the basis for equalization purposes."

Plaintiff further alleges and charges that the State Board of Equalization and the County Assessors of the several counties, pursuant to said purpose and plan to undervalue all farm lands in the state for taxing purposes for the year 1921 met in convention at the City of Lincoln on the 18th day of March, 1921, and adopted a resolution in words and figures following, to wit:

"Resolution adopted at State Assessors' Meeting, March 18, 1921.

"At a meeting of the county assessors, held at Lincoln, Nebraska, on March 18, 1921, the following resolution, introduced by Harry W. Scott, of Pawnee City, was adopted:

"'Whereas, there has been an expression representing the sentiment of sixty-four counties and the result of such expression seems to average 15 per cent reductions under 1920 real estate values.

"'Therefore, be it resolved, that it be the sense of this meeting that the aggregate return of the value of real estate in each county be returned to the State Board at not to exceed a 15 per cent reduction.

16 "'It being understood that this shall in no way be binding upon any county, but merely suggests a uniformity of action.

"'Dated this 19th day of March, 1921. (Signed) G. L. Mumford, Secretary-Treasurer.'"

Plaintiff further alleges and charges that the defendant, Osborne, as Tax Commissioner, provided each and every county assessor in the State of Nebraska with a copy of said resolution and stated to said assessor in writing as follows:

"The above and foregoing is a verbatim copy of a resolution adopted by the County Assessors of the State, at their meeting, held in the City of Lincoln, on March 18, 1921, and it is requested by this department that you read the resolution over carefully, so that the result of their labors will be in accordance with the thought of the conference. We very much desire to avoid the necessity of being compelled to again equalize to any great extent by counties this year, feeling as we do, that we have a very good equalization over the state at this time, but where the occasion demands, the State Board will not shirk its duty to fairly and equitably raise or lower any county, to the end that each bears its just relation, one to the other."

Plaintiff further alleges and charges that the said several county assessors, pursuant to said express purpose, returned the valuation of real property in their respective counties at only about 47 per cent of the true value thereof, and that the State Board of Equalization upon receiving said returns from the said several counties equalized the valuations on real property so that the average valuation does not exceed 47 per cent of the true value of real property in the State of Nebraska for the year 1921, and for the year 1922, at only

17 about 60 per cent of the true value of said farm lands; that said concerted action by the said county assessors and the State Board of Equalization to return a valuation for taxing purposes on real property of only about 60 per cent of the true value thereof, was in violation of the Constitution and Laws of the State of Nebraska and in violation of the duties of said officials and in violation of the rights of the plaintiff, whose property has been fixed by said Board of Equalization at more than the true full actual value thereof.

X.

Plaintiff further alleges and charges that the said action of the said Board of Equalization and the several county assessors in under-valuing farm lands for the purposes of taxation pursuant to said

intentional concerted and pre-arranged plan while at the same time valuing the property of the plaintiff at 100 per cent and more of the true value thereof for taxing purposes, constitutes an unlawful discrimination against the plaintiff and compels the plaintiff to bear more than its just proportion of the burden of taxation within the state in violation of the Constitution and Laws of the State of Nebraska, as above set forth; that the action of the State Board of Equalization and the several county authorities in intentionally and systematically under-valuing farm lands, which constitute about 76 per cent of the taxable property of the state, while requiring the plaintiff to pay taxes upon the full actual value and more of its property, constitutes an unjust and unlawful discrimination against the plaintiff and denies plaintiff equal protection of the law guaranteed by the Constitution of Nebraska and the laws of Nebraska, and guaranteed by the Fourteenth Amendment of the Constitution of the United States, and deprives plaintiff of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

18 XI.

Plaintiff further alleges that the intentional and systematic under-valuation by the State Board of Equalization and the several county assessors of farm lands within the State of Nebraska, being about 76 per cent of the total taxable property in said state, at only 68 per cent of the true value thereof, for taxing purposes, while valuing the property of the plaintiff at 100 per cent or more of its true value, and requiring plaintiff to pay taxes on said true value or more constitutes and is an unlawful burden upon interstate commerce, in that more than 90 per cent of the commerce carried by plaintiff over the lines of its railroad in the state of Nebraska is interstate in character; that all taxes which plaintiff is required to pay in the State of Nebraska are chargeable to expenses of operation, and that for the defendants and the State of Nebraska, by said unlawful and intentional discrimination in valuation between plaintiff and other taxpayers in the state, to impose an undue and unlawful expense upon the handling of interstate commerce, constitutes and is an unlawful discrimination against interstate commerce, and an unlawful burden thereon in violation of the Constitution of the United States.

XII.

Plaintiff further alleges that it is entitled to the equal protection of the laws of the State of Nebraska; that said laws of the State of Nebraska make it the duty of the State Board of Equalization and the several county assessors to fix valuations of all property
19 in the State at true, full, actual value; that the said State Board of Equalization has full power to correct any inequality of valuations which may be returned by the several county assessors, and it was the duty of said State Board of Equalization so to do, but

plaintiff alleges that the said State Board of Equalization, in violation of the Constitution and Laws of the State of Nebraska, not only refused to change said valuation so as to put plaintiff upon a basis of equality with other taxpayers, as required by law, but the said State Board of Equalization intentionally co-operated with the said county assessors for the purpose of returning the value of farm property at only 60 per cent of the true value thereof for taxing purposes for the year 1922, while requiring the plaintiff to pay taxes upon full actual value and more of its property within the state; that said action of the taxing authorities mentioned denies to plaintiff equal protection of the law, guaranteed by the Fourteenth Amendment to the Constitution of the United States. But plaintiff alleges that it has no remedy at law in the premises; that heretofore the Supreme Court of the State of Nebraska, by repeated decisions, has held that a taxpayer whose property is assessed at 100 per cent or more of its true value, while the property of other taxpayers is valued at only a fraction of true value, has no remedy save and except to use its best endeavors to have the taxing officials raise the valuations of the property of other taxpayers. And in that behalf plaintiff alleges that it appeared before the State Board of Equalization at the time provided by law and requested and petitioned the State Board of Equalization to either fix the valuation of plaintiff's property on the same percentage of true value as enjoyed by all other taxpayers in the state, by the alternative action by said State Board of Equalization of reducing the value of plaintiff's property to the basis of the others or by raising the valuation of all other property in the State to full 100 per cent actual value thereof, but plaintiff alleges that the said State Board of Equalization denied said petition and has refused to the plaintiff any relief in the premises. And plaintiff alleges that the said State Board of Equalization not only denied plaintiff any relief whatever, but certified to the several county clerks the valuation of plaintiff's property at more than 100 per cent of the full true value thereof and certified the valuation of the farm land in the several counties at only an average of about 60 per cent of the true value thereof, for the year 1922.

XIII.

Plaintiff further alleges that the county clerks of the several counties mentioned, have received said discriminatory valuations certified to them by the State Board of Equalization and have spread upon the tax list the valuation of plaintiff's property at the amount fixed by the State Board of Equalization, which is more than 100 per cent of the true value thereof, and said county clerks have spread upon the tax list the valuations of farm lands in their respective counties at only about 60 per cent average of the true value thereof; and plaintiff alleges and charges that the several defendants, who are county treasurers of the counties mentioned, have, since the first day of November, 1922, called upon the plaintiff to pay taxes in the several counties based upon said unlawful and discriminatory valuation of plaintiff's property, as compared with the valuations of other property

in the county, and plaintiff alleges that said defendants, and each of them, will proceed to carry out said unlawful purpose and will impose upon and collect from plaintiff said unlawful taxes based upon said unlawful valuation and discriminatory basis unless restrained by order of this court.

XIV.

Plaintiff further alleges that it has always been and now is willing to pay its lawful share of the taxes of the state, and in that
21 behalf plaintiff alleges that it is willing and hereby offers to pay the several county treasurers as soon as said taxes become due and payable to said treasurers all taxes lawfully levied against its property based upon a valuation not exceeding 50 per cent of the valuations certified to the several county clerks and the county treasurers by the State Board of Equalization for the year 1922, and plaintiff alleges that it will keep said offer good and will pay said taxes when due upon said basis.

XV.

Plaintiff further alleges that it has no adequate remedy at law; that no appeal whatever is provided from the action of the State Board of Equalization, and plaintiff has no remedy at law and no remedy whatever save by decree of this court restraining and enjoining the defendants from carrying out said unlawful plan and imposing and collecting said unlawful taxes against plaintiff.

XVI.

Plaintiff further alleges and charges that said unlawful taxes constitute a lien against plaintiff's property and a cloud upon plaintiff's title to said property, that the lien of said taxes against plaintiff's property will unlawfully burden plaintiff in its ability to finance its business as a common carrier of interstate commerce, and cripple, injure, and impair the plaintiff in the operation of its line of railroad as a common carrier of interstate commerce. And plaintiff further alleges that the defendant county treasurers, and each of them, will issue numerous distress warrants against the plaintiff and against its property and will cause to be instituted large numbers of suits against the plaintiff for the collection of said unlawful and discriminatory taxes unless restrained from so doing by order of this court.

22 Wherefore, as plaintiff is without remedy at and by the rules of the common law, plaintiff prays:

1. That subpœnaes in equity forthwith issue for the defendants, and each of them, requiring them to answer to the petition of the plaintiff herein, but not under oath, said oath being hereby expressly waived.

2. Plaintiff further prays the Court to enter an order prescribing the percentage of actual value of plaintiff's property upon which plaintiff shall tender taxes to the several county treasurers, defendants

herein, for the year 1922, pending the final determination of this suit.

3. Plaintiff further prays the Court to issue its order of temporary injunction against the defendants, and each of them, upon due notice as required by law, restraining and enjoining the defendants, and each of them, from carrying out their said purpose to impose upon the plaintiff said unlawful and discriminatory valuations of its property for taxing purposes, and to restrain and enjoin the defendants, and each of them, from collecting any taxes against the plaintiff upon a valuation greater than that to be fixed by the Court, in accordance with the prayer of this petition, and that pending such hearing the defendants be restrained from collecting said unlawful taxes.

4. Plaintiff further prays the Court that upon final hearing the Court will issue its order of injunction forever restraining and enjoining the defendants, and each of them, from collecting from the plaintiff or against its property taxes in excess of the just and fair valuation of plaintiff's property and in proportion to the valuation of the property of other taxpayers, as found and fixed by order of this court, and plaintiff further prays the Court for a decree declaring null and void the valuation of plaintiff's property as fixed by
23 the said State Board of Equalization, and as now same appears upon the records of the defendants herein, and discharging plaintiff's property from the pretended lien of said unlawful valuation; and plaintiff prays for such other and further relief in the premises as justice and equity may require. Chicago and North Western Railway Company, By Wymer Dressler, Robert D. Neely, Paul S. Topping, Its Attorneys.

STATE OF NEBRASKA,
County of Douglas, ss:

I, Wymer Dressler, being first duly sworn on oath, depose and say that I am the attorney for the Chicago and North Western Railway Company, a corporation; that I have read the foregoing Petition in Equity and know the contents thereof, and that the statements and allegations therein contained are true; that my information is based upon a personal inspection of the records of the State Board of Equalization and personal knowledge of the action taken by said Board with respect to railroad assessments. Wymer Dressler.

Subscribed and sworn to before me this 24th day of November, 1922. Ruth Levey, Notary Public in and for Douglas County, Nebraska. (Seal.)

[File endorsement omitted.]

24 Afterwards, to-wit: On the 15th day of December, 1922, a Motion to Dismiss was filed in said cause, which is in words and figures following, to-wit:

In the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Motion to Dismiss.

[Filed Dec. 15, 1922.]

Comes now W. H. Osborne, Jr., defendant above named, and moves the court to dismiss the above entitled suit for the following reasons:

1. The plaintiff had a plain, adequate and complete remedy at law for its protection against all of the alleged illegal acts charged in the petition by means of an error proceeding from the State Board of Equalization and Assessment to the Supreme Court of the State of Nebraska.

2. This suit does not involve as much as $3,000 as to each defendant.

3. There is insufficiency of fact alleged in the petition to constitute a valid cause of action in equity against the defendants, or any of them. Clarence A. Davis, Attorney General of Nebraska, By Hugh La Master, Asst. Atty. Genl. of Nebraska, Attorneys for Moving Defendants.

[File endorsement omitted.]

25 Afterwards, to-wit: On the 21st day of December, an Order of Court was filed in said cause, which is in words and figures following, to-wit:

In the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Order Granting Leave to File Supplemental Bill.

[Filed Dec. 28, 1922.]

Now on this 21st day of December, 1922, upon application of the Plaintiff in open Court leave is hereby granted to the Plaintiff to file a supplemental bill making parties defendants the county treasurers of the several counties involved in this suit who shall take office in January, 1923 as successors to those county treasurers who are now defendants in said suit. By the court: J. W. Woodrough, Judge.

[File endorsement omitted.]

26 Chancery Subpœna. Original. Case No. 492. Equity.

Chancery Subpœna and Service.

[Filed Dec. 28, 1922.]

United States District Court, District of Nebraska, Omaha Division.

The President of the United States to W. H. Osborne, Jr., as State Tax Commissioner of the State of Nebraska; H. C. Haverly, as County Treasurer, Adams County, Nebraska; Guy E. Thornton, as County Treasurer, Antelope County, Nebraska; R. M. Hutchinson, as County Treasurer, Boone County, Nebraska; D. J. Tomek, as County Treasurer, Boyd County, Nebraska; Mamie McAndrews, as County Treasurer, Brown County, Nebraska; Philip A. Tomek, as County Treasurer, Butler County, Nebraska; W. E. Haley, as County Treasurer, Cherry County, Nebraska; Harry J. Platz, as County Treasurer, Clay County, Nebraska; George W. Smith, as County Treasurer, Colfax County, Nebraska; Henry Schwinek, as County Treasurer Cuming County, Nebraska; Belle Quinn, as County Treasurer, Dawes County, Nebraska; Joseph Roberts, as County Treasurer, Dodge County, Nebraska; M. L. Endres, as County Treasurer, Douglas County, Nebraska; Lester S. Donisthorpe, as County Treasurer, Fillmore County, Nebraska; R. E. Gallagher, as County Treasurer, Holt County, Nebraska; Harry E. Toof, as County Treasurer, Hamilton County, Nebraska; Edward Matthews, as County Treasurer, Knox County, Nebraska; William Albers, as County Treasurer, Lancaster County, Nebraska; P. W. Ruth, as County Treasurer, Madison County, Nebraska; A. L. Brande, as County Treasurer, Pierce County, Nebraska; Belle Galley, as County Treasurer, Nuckolls County, Nebraska; A. J. Krivcki, as County Treasurer, Platte County, Nebraska; J. C. Wallace, as County Treasurer, Rock County, Nebraska; George F. Bartek, as County Treasurer; Saunders County, Nebraska; C. E. Morefield, as County Treasurer, Seward County, Nebraska; Bruce H. Hewitt, as County Treasurer, Sheridan County, Nebraska; Fred W. Meyer, as County Treasurer, Sioux County, Nebraska; E. B. Roper, as County Treasurer, Thayer County, Nebraska; R. G. Allen, as County Treasurer, Washington County, Nebraska; Frank L. Propst, as County Treasurer, York County, Nebraska; and the successors in office of each of said defendants, Robert Gratton, Co. Treas. of Stanton County, Greeting:

You are hereby commanded to be and appear at the office of the Clerk of the District Court of the United States for the District of Nebraska, on or before the twentieth day after service of this writ, at the City of Omaha, then and there to answer the bill of complaint of Chicago and North Western Railway Company, this day filed against you, hence fail not.

Witness, The Honorable, the Judges of the District Court of the United States for the District of Nebraska, this 24th day of November, 1922.

Issued at my office in the City of Omaha under the Seal of said District Court, the day and year last aforesaid. R. C. Hoyt, Clerk. John Nicholson, Deputy. (Seal.)

Memorandum.—The above-named defendants to file their answer or other defense in this suit in the Clerk's office aforesaid, on or before the twentieth day after service excluding the day thereof, otherwise the bill may be taken pro confesso. R. C. Hoyt, Clerk, By John Nicholson, Deputy.

(This writ is returnable within twenty days from date of issue.)

[File endorsement omitted.]

[Endorsed:] No. —, Equity Docket. Marshal's No. 2888. United States District Court, District of Nebraska, —— Division. (Original.) Chancery subpœna.

Marshal's Costs.

Service	$64.00
Mileage	.....
Expense (in lieu of mileage)	119.80
Total	183.80

27 Attached to said Chancery Subpœna are the following returns by the United States Marshal:

Form 60.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 24th day of November, 1922, I received this Chancery Subpœna, and on the 8th day of November, 1922, I served the same upon the within-named Joe Sedlack, County Treasurer of Colfax County Neb. at Schuyler in Colfax County, State, and District of Nebraska, by delivering to and leaving with him personally a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By Anthony J. Ruddy, Deputy United States Marshal.

Form 60.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 24th day of November, 1922, I received this Chancery Subpœna, and on the 8th day of December, 1922, I served the same upon the within-named A. J.

Kriycki, County Treasurer of Platte County, at Columbus in Platte County, State, and District of Nebraska, by delivering to and leaving with him personally a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By Anthony J. Ruddy, Deputy United States Marshal.

Form 60.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 24th day of November, 1922, I received this Chancery Subpœna, and on the 9th day of December, 1922, I served the same upon the within-named P. W. Ruth County Treasurer of Madison County at Madison in Madison County, State, and District of Nebraska, by delivering to and leaving with him personally a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By Anthony J. Ruddy, Deputy United States Marshal.

28 Form 60.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 24th day of November, 1922, I received this Chancery Subpœna, and on the 9th day of December, 1922, I served the same upon the within-named Robert W. Hutchinson County Treasurer at Boone County at Albion in Boone County, State, and District of Nebraska, by delivering to and leaving with him personally a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By Anthony J. Ruddy, Deputy United States Marshal.

Form 60.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 2nd day of December, 1922, I received this Chancery Subpœna, and on the 7th day of December, 1922, I served the same upon the within-named D. J. Tomek, County Treasurer of Boyd County, Nebraska, at Butte in Boyd County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. G. Gannon, Deputy United States Marshal.

Form 60.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 2nd day of December, 1922, I received this Chancery Subpœna, and on the 6th day of

December, 1922, I served the same upon the within-named Edward Matthews, County Treasurer of Knox County, Nebraska, at Center in Knox County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. G. Gannon, Deputy United States Marshal.

29 Form 60.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 2nd day of December, 1922, I received this Chancery Subpœna, and on the 5th day of December, 1922, I served the same upon the within-named A. L. Brande, County Treasurer of Pierce County, Nebraska, at Pierce in Pierce County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. G. Gannon, Deputy United States Marshal.

Form 60.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st, day of Dec. 1922, I received this Chancery Subpœna, and on the 7th day of Dec. 1922, I served the same upon the within-named R. G. Allen, as Treasurer of Washington County, Nebraska, at Blair, in Washington County, State, and District of Nebraska, by deliveringg to and leaving with R. G. Allen a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. A. Davis, Deputy United States Marshal.

Form 60.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st, day of December, 1922, I received this Chancery Subpœna, and on the 5th day of December, 1922, I served the same upon the within-named Philip A. Tomek, Treasurer of Butler County at David City, Nebr. in Butler County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. C. McClung, Deputy United States Marshal.

30 DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st, day of December, 1922, I received this Chancery Subpœna, and on the 6th day of December, 1922, I served the same upon the within-named Lester S. Donisthorpe, Treasurer Filmore Co. at Geneva, Nebra. in Filmore County, State, and District of Nebraska, by delivering to and

leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. C. McClung, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st, day of December, 1922, I received this Chancery Subpœna, and on the 3rd day of December, 1922, I served the same upon the within-named E. B. Roper, Treasurer of Thayer County, at Hebron, Nebr., in Thayer County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. C. McClung, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st, day of December, 1922, I received this Chancery Subpœna, and on the 4th day of December, 1922, I served the same upon the within-named W. H. Osborne, State Tax Commissioner at Lincoln, in Lancaster County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, Nebraska, By J. C. McClung, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st, day of December, 1922, I received this Chancery Subpœna, and on the 4th day of December, 1922, I served the same upon the within-named William Albers, Treasurer of Lancaster County, at Lincoln, in Lancaster County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. C. McClung, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st, day of December, 1922, I received this Chancery Subpœna, and on the 4th day of December, 1922, I served the same upon the within-named George F. Bartek, Treasurer Saunders County, at Wahoo, in Saunders County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. C. McClung, Deputy United States Marshal.

31 DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st, day of December, 1922, I received this Chancery Subpœna, and on the 5th day of December, 1922, I served the same upon the within-named Agnes

Pence, Treasurer of Seward County, at Seward, Nebr. in Seward County, State, and District of Nebraska, by delivering to and leaving with her a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. C. McClung, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st, day of December, 1922, I received this Chancery Subpœna, and on the 5 day of December, 1922, I served the same upon the within-named Fred W. Meyer, County Treasurer Sioux County, at Harrison in Sioux County, State, and District of Nebraska, by delivering to and leaving with him personally a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By A. M. Wright, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st, day of December, 1922, I received this Chancery Subpœna, and on the 5 day of December, 1922, I served the same upon the within-named Bruce H. Hewitt County Treasurer Sheridan County at Rushville in Sheridan County, State, and District of Nebraska, by delivering to and leaving with him personally a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By. A. M. Wright, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st, day of December, 1922, I received this Chancery Subpœna, and on the 4 day of December, 1922, I served the same upon the within-named W. E. Haley County Treasurer Cherry County at Valentine in Cherry County, State, and District of Nebraska, by delivering to and leaving with him personally a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By A. M. Wright, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st, day of December, 1922, I received this Chancery Subpœna, and on the 4 day of December, 1922, I served the same upon the within-named Mamie McAndrews, County Treasurer Brown County, at Ainsworth in Brown County, State, and District of Nebraska, by delivering to and leaving with her personally a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By A. M. Wright, Deputy United States Marshal.

32 DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st day of December, 1922, I received this Chancery subpœna, and on the 4 day of December, 1922, I served the same upon the within-named J. C. Wallace, County Treasurer Rock County, at Bassett in Rock County, State, and District of Nebraska, by delivering to and leaving with him personally a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By A. M. Wright, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st day of December, 1922, I received this Chancery Subpœna, and on the 2 day of December, 1922, I served the same upon the within-named F. A. Nuland, County Treasurer Dawes County, at Chadron in Dawes County, State, and District of Nebraska, by delivering to and leaving with him personally a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By A. M. Wright, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st day of December, 1922, I received this Chancery Subpœna, and on the 6th day of December, 1922, I served the same upon the within-named H. C. Haverly, Treasurer of the County of Adams, at Hastings, in Adams County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By Fred R. Mandeville, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st day of December, 1922, I received this Chancery Subpœna, and on the 5th day of December, 1922, I served the same upon the within-named Belle Galley, Treasurer of the County of Nuckolls, at Nelson in Nuckolls County, State, and District of Nebraska, by delivering to and leaving with her a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By Fred R. Mandeville, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st day of December, 1922, I received this Chancery Subpœna, and on the 5th day of December 1922, I served the same upon the within-named Harry J. Platz, Treasurer of the County of Clay, at Clay Center, in Clay County, State, and District of Nebraska, by delivering to and leav-

ing with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By Fred R. Mandeville, Deputy United States Marshal.

33 DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st day of December, 1922, I received this Chancery subpœna, and on the 4th day of December, 1922, I served the same upon the within-named Frank L. Propst, Treasurer of the County of York, at York in York County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By Fred R. Mandeville, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st day of December, 1922, I received this Chancery Subpœna, and on the 4th day of December, 1922, I served the same upon the within-named Harry E. Toof, Treasurer of the County of Hamilton, at Aurora in Hamilton County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By Fred R. Mandeville, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st day of December, 1922, I received this Chancery Subpœna, and on the 2nd day of December, 1922, I served the same upon the within-named Guy E. Thornton, as County Treasurer of Antelope County, at Neligh, in Antelope County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By Lee A. Weekes, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st day of December, 1922, I received this Chancery Subpœna, and on the 2nd day of December, 1922, I served the same upon the within-named R. E. Gallagher, as County Treasurer of Holt County, at O'Neill, in Holt County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By Lee A. Weekes, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st day of December, 1922, I received this Chancery Subpœna, and on the 4th day of December, 1922, I served the same upon the within-named Robert

Gratton, as County Treasurer of Stanton County, at Stanton in Stanton County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By Lee A. Weekes, Deputy United States Marshal.

34 DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st day of December, 1922, I received this Chancery Subpœna, and on the 4th day of December, 1922, I served the same upon the within-named Henry Schwinek, as County Treasurer of Cuming County, at West Point in Cuming County, State and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By Lee A. Weekes, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 24th day of Nov. 1922, I received this chancery subpœna and on the 29th day of Nov. 1922 I served the same upon the within-named M. L. Endres, County Treasurer of Douglas County, Nebraska, at Omaha in Douglas County, State, and District of Nebraska, by delivering to and leaving with M. L. Endres, a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. A. Davis, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 25th day of November, 1922, I received this Chancery Subpœna, and on the 25th day of November, 1922, I served the same upon the within-named Joseph Roberts, Treasurer of Dodge County, at Fremont, in Dodge County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By Lee A. Weekes, Deputy United States Marshal.

35 Afterwards, to-wit: On the 2nd day of January, 1923, a Supplemental Petition was filed in said cause, which is in words and figures following, to-wit:

In the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Supplemental Petition in Equity.

[Filed Jan. 2, 1923.]

Comes now the Plaintiff and shows to the Court that since the trial of this cause before three judges and since said cause was taken under advisement and pending a decision an election has occurred whereby certain new officers, County Treasurers, have been elected and should be made parties to this suit and by leave of court heretofore granted Plantiff hereby alleges that the following named Defendants should be made parties to this suit and a subpœna in equity served upon each of them, to-wit:

D. C. Fletcher as County Treasurer of Antelope County, Nebraska.
Bertha Watson as County Treasurer of Boone County, Nebraska.
William Miller as County Treasurer of Butler County, Nebraska.
Joe Sedlacek as County Treasurer of Colfax County, Nebraska.
Fred Wackel as County Treasurer of Cuming County, Nebraska.
O. E. Riggle as County Treasurer of Cherry County, Nebraska.
Otto Bauman as County Treasurer of Douglas County, Nebraska.
Clay Thomas as County Treasurer of Fillmore County, Nebraska.
W. E. Conklin as County Treasurer of Holt County, Nebraska.
A. E. Sutherland as County Treasurer of Lancaster County, Nebraska.
W. L. Boettcher as County Treasurer of Platte County, Nebraska.
H. E. Patch as County Treasurer of Rock County, Nebraska.
E. B. Lyons as County Treasurer of Sioux County, Nebraska.
Clarence S. Marcy as County Treasurer of Sheridan County, Nebraska.
Robert Gratton as County Treasurer of Stanton County, Nebraska.
Agnes J. Pence as County Treasurer of Seward County, Nebraska.
F. C. Cederholm as County Treasurer of Thayer County, Nebraska.
Charles H. Robertson as County Treasurer of Washington County, Nebraska.
Peard B. Woodworth as County Treasurer Adams County, Nebraska.

36 Wherefore, Plaintiff prays the same relief against the above mentioned Defendants as it prayed in its original Petition against the original Defendants, County Treasurers in said respective counties. Chicago and North Western Railway Company, By Wymer Dressler, Robert D. Neely, P. S. Topping, Its Attorneys.

STATE OF NEBRASKA,
County of Douglas, ss:

Robert D. Neely being duly sworn deposes and says that he is one of the Attorneys for the above named Plaintiff; that he has read the foregoing Supplemental Petition in Equity and knows the contents thereof and that the statements therein contained are true as he verily believes. Robert D. Neely.

Subscribed and sworn to before me this 2nd day of January, 1923. Ruth Levey, Notary Public. (Notarial Seal.)

The Clerk will forthwith issue subpoenas in chancery for each of the above mentioned Defendants and deliver same to the Marshal for service, said service to be completed before January 10th, 1923. Wymer Dressler, Robert D. Neely, P. S. Topping, Attorneys for Plaintiff.

[File endorsement omitted.]

37 Afterwards, to-wit: On the 10th day of January, 1923, an Order of Court was filed in said cause, which is in words and figures following, to-wit:

In the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Order Denying Temporary Injunction.

[Filed Jan. 10, 1923.]

Now on this 10th day of January, A. D. 1923, this cause having heretofore been taken under advisement by the court on plaintiff's application for a temporary injunction the Court being well advised in the premises, doth find:

That plaintiff for the redress of the wrongs recited in its petition had an adequate remedy at law under the statutes of the State of Nebraska in prosecuting error proceedings to the Supreme Court of the State of Nebraska, and for that reason there is no equity in the application for a temporary injunction.

It is therefore considered by the Court that plaintiff's application for temporary injunction be and hereby is denied.

To all and singular the findings and judgment of the Court plaintiff excepts and its exceptions are hereby allowed. By the Court: Robt. E. Lewis, Circuit Judge. Thos. C. Munger, District Judge. J. W. Woodrough, District Judge.

[File endorsement omitted.]

38 Afterwards, on the 10th day of January, 1923, an Application for Injunction Pending Appeal, was filed in said cause, which is in words and figures following, to-wit:

In the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Application for Injunction Pending Appeal.

[Filed Jan. 10, 1923.]

Hon. Robert E. Lewis, Circuit Judge, Hon. Thos. C. Munger, District Judge, Hon. J. W. Woodrough, District Judge, Presiding.

Comes now the Plaintiff on this tenth day of January, 1923, the Court having heretofore on this date entered its order denying the prayer of the Plaintiff for an interlocutory injunction against the Defendants and shows to the Court that the Plaintiff will immediately appeal and has appealed to the Supreme Court of the United States from the order of the Court denying Plaintiff's prayer for an interlocutory injunction and Plaintiff further shows to the Court that the whole amount of taxes levied against the Plaintiff and which were withheld by the Plaintiff from payment pending the hearing of the Plaintiff's prayer for a temporary injunction were the sum of four hundred ninety six thousand nine hundred fifty three & 22/100-Dollars ($496,953.22); that Plaintiff has always desired to pay such portion of said taxes as may be justly and legally due the Defendants and Plaintiff asserts that under the pleadings and evidence adduced before this Honorable Court the Plaintiff does not owe to the Defendants taxes in excess of Sixty per cent (60%) of the amount above specified but Plaintiff says that it desires to do equity in the premises and for that purpose

39 Plaintiff is willing to pay Sixty-five per cent (65%) of said taxes pending the outcome of its appeal to the Supreme Court of the United States.

Plaintiff further shows to the Court that notwithstanding the Court has entered its Order denying any relief to the Plaintiff on the ground that Plaintiff had an adequate remedy at law by way of error proceedings to the Supreme Court of Nebraska which deprived the Court of jurisdiction to grant Plaintiff any relief in the premises the Plaintiff most respectfully represents to the Court that said decision of the Court was erroneous and Plaintiff should have the privilege of testing the validity of the Court's Order by appeal to the Supreme Court of the United States and in the meantime be protected against the payment to the Defendants of that portion of said taxes which the Plaintiff claims, and the proof shows Defendants are not lawfully entitled to collect; and Plaintiff further represents and shows to the Court that justice and equity will be promoted if the Court will make and enter an order enjoining

the Defendants, pending the appeal, from collecting from the Plaintiff a greater amount then sixty-five per cent (65%) of said taxes; that if the Court should refuse to grant such an order pending appeal Plaintiff will be compelled, by distress warrants, to pay the whole amount of said taxes to the Defendants and Defendants will disburse the money thus paid and Plaintiff will be without remedy and Plaintiff fears that in such event the question presented by Plaintiff's appeal will become moot in the Supreme Court of the United States and Plaintiff will be without any remedy whatever for the protection of its rights in the premises.

Plaintiff further shows and represents to the Court that Plaintiff is solvent and is able, ready and willing to execute a bond with good and sufficient surety in such sum as the Court may direct fully protecting the Defendants and the public, so that in the event the Supreme Court of the United States shall hold that the order of this Court denying Plaintiff's prayer for an interlocutory injunction was properly entered the whole amount of said taxes may be secured to the Defendants and to the public together with interest thereon and the costs of the appeal.

Plaintiff further shows and represents to the Court that the percentage of taxes to be paid to the Defendants pending the appeal are believed by the Plaintiff under the pleadings and the evidence and the law in this case to not exceed sixty per cent (60%), yet Plaintiff desires to do full equity and if the Court should be of the opinion that a different percentage of taxes should be paid as a condition of an injunction against the collection of the balance pending appeal Plaintiff is willing that the Court shall fix the percentage of taxes above mentioned which shall be paid as a condition of an injunction against the Defendants restraining them from collecting the balance of said taxes pending appeal.

Wherefore, Plaitiff prays that the Court will enter an order prescribing and fixing the percentage of taxes above mentioned which shall be forthwith paid to the Defendants as a condition of an injunction against the Defendants restraining them from collecting the balance of said taxes pending appeal of the Plaintiff to the Supreme Court of the United States. The Plaintiff further prays the Court to enter its order restraining and enjoining the Defendants, their officers, agents, employes and successors in office from collecting or attempting to collect from the Plaintiff the balance of said taxes other than the percentage the Court shall fix to be paid pending Plaintiff's appeal to the Supreme Court of the United States.

Plaintiff further prays the Court to fix and prescribe the amount of bond which Plaintiff shall give as a supersedeas bond to protect the Defendants and the public against loss on account of the Plaintiff being permitted to withhold such portion of said taxes as the Court shall prescribe until the determination of the appeal of the Plaintiff by the Supreme Court of the United States and for such other relief as justice and equity require in the premises.

Wymer Dressler, R. D. Neely, Paul S. Topping, Attorneys for Plaintiff.

STATE OF NEBRASKA,
County of Douglas, ss:

Wymer Dressler being duly sworn deposes and says that he is solicitor for the Plaintiff in the above entitled cause; that he personally prepared the Petition in Equity in this cause; that he represented the Plaintiff at the trial of said cause and is familiar with the pleadings and evidence in said cause; that he has read the foregoing application which was prepared by him personally; that he believes said application to be true and that he believes that justice and equity will be promoted by the Court granting the order of injunction and the other things in said application prayed for; that the appeal in this case is taken in good faith and not for the purpose of delay, and will be prosecuted speedily and the cause brought to a final determination with all reasonable dispatch. Wymer Dressler.

Subscribed and sworn to before me this 10th day of January, 1922. Ruth Levey, Notary Public. (Notarial Seal.)

[File endorsement omitted.]

42 Afterwards, to-wit: On the 10th day of January, 1923, an Order of Court was filed in said cause, which is in words and figures following, to-wit:

In the District Court of the United States for the District of Nebraska.
Omaha Division.

[Title omitted.]

Order Fixing Percentage of Taxes to be Paid.

[Filed Jan. 10, 1923.]

Now on this tenth day of January, 1923, the Court having heretofore entered its Order denying to the Plaintiff an interlocutory injunction in this cause on the ground that Plaintiff had an adequate remedy at law by way of error proceedings to the Supreme Court of Nebraska, and the Plaintiff having given notice of its appeal to the Supreme Court of the United States from said Order; and the Plaintiff having presented its application for an order fixing the percentage of taxes to be paid by Plaintiff pending Plaintiff's appeal to the Supreme Court of the United States and prescribing the amount of bond which Plaintiff shall give as the condition for the Court granting an order of injunction restraining and enjoining the Defendants from collecting the balance of said taxes pending the determination of said appeal; and the Court being of the opinion that the Defendants cannot be harmed and the rights of the Plaintiff will be promoted by having an opportunity to present said appeal to the Supreme Court of the United States.

It is by the Court ordered and decreed that the Plaintiff shall pay or offer to pay to the Defendant County Treasurers or their successors

in office as their respective interests may appear seventy-five per cent (75%) of the taxes now being withheld by the Plaintiff and
43 that pending the determination of Plaintiff's appeal by the Supreme Court of the United States and until the further order of the Court the Defendants, their officers, agents and successors in office be and they hereby are restrained and enjoined from collecting or attempting to collect from the Plaintiff the balance of said taxes after the payment of said percentage above prescribed, in counties when the total amount of tax levied against property is over $3,000, exclusive of interest.

It is further ordered that Plaintiff shall execute a bond in favor of the Defendants and the State of Nebraska for the use and benefit of the Defendants and their successors in office in the sum of one hundred & fifty thousand dollars ($150,000) which bond may be approved by the Hon. J. W. Woodrough, District Judge. Robt. E. Lewis, United States Circuit Judge. Thos. C. Munger, United States District Judge. J. W. Woodrough, United States District Judge.

[File endorsement omitted.]

44 Afterwards, to-wit: On the 10th day of January, 1923, an Assignment of Errors was filed in said cause, which is in words and figures following, to-wit:

In the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Assignment of Errors.

[Filed Jan. 10, 1923.]

Now comes the Plaintiff in the above entitled cause and files the following Assignment of Errors upon which it will rely upon its prosecution of the appeal in the above entitled cause from the Order and Decree made by this Honorable Court (three Judges presiding) on the tenth day of January, 1923.

1.

That the United States District Court for the District of Nebraska, Omaha Division, erred in denying Plaintiff's application for a temporary injunction in this cause.

2.

That the United States District Court for the District of Nebraska, Omaha Division, erred in its decision embodied in its Order dated January 10, 1923, that Plaintiff has an adequate remedy at law as therein recited.

Wherefore, Appellant prays that said Order and Decree be reversed and that said District Court of the United States for the District of Nebraska, Omaha Division, be ordered and directed to hear and determine said cause upon the merits and to grant to Appellant a temporary injunction as prayed in its Petition.

Dated this tenth day of January, A. D. 1923. Wymer Dressler, F. W. Sargent, R. N. Van Doren, Attorneys for Appellant.

[File endorsement omitted.]

45 Afterwards, to-wit: On the 10th day of January, 1923, a Petition for Appeal was filed in said cause, which is in words and figures following, to-wit:

In the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Petition for Appeal.

[Filed Jan. 10, 1923.]

To the Honorable District Court of the United States for the District of Nebraska, Omaha Division:

The above named Plaintiff feeling aggrieved by the order and decree rendered and entered in the above entitled cause on the tenth day of January, 1923 which Order and Decree was made by the Hon. Robert E. Lewis, Circuit Judge, Hon. Thomas C. Munger, District Judge and Hon. J. W. Woodrough, District Judge, composing said Court, does hereby appeal from said Decree to the Supreme Court of the United States for the reasons set forth in the Assignment of Errors filed herewith and prays that said appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said Decree was based, duly authenticated, be sent to the Supreme Court of the United States sitting at Washington, D. C. under the rules of such Court in such cases made and provided.

And your Petitioner further prays that an Order relating to the security to be required of it be made.

Dated this 10th day of January, A. D. 1923. Chicago and North Western Railway Company, By Wymer Dressler, F. W. Sargent, R. N. Van Doren, Its Attorneys.

[File endorsement omitted.]

46 Citation—U. S. Supreme Court. 492. Equity. (Appeal.)

Citation and Service.

[Filed Jan. 17, 1923.]

The United States of America to W. H. Osborne, Jr., as State Tax Commissioner of the State of Nebraska, et al., and to Hugh La Master, Assistant Attorney General of Nebraska, and O. S. Spillman, Attorney General of Nebraska, attorneys for said defendants, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington, thirty days from and after the day this Citation bears date, pursuant to an appeal, filed in the Clerk's office of the District Court of the United States for the District of Nebraska, wherein Chicago and North Western Railway Company is Appellant, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Judges of the District Court of the United States for the District of Nebraska, this 10th day of January, A. D. 1923. J. W. Woodrough, United States District Judge, District of Nebraska.

Return.

I hereby certify and return that I received this Citation on the 11th day of January, 1923 and on the same day I served the same upon the within named W. H. Osborne, Jr. as State Tax Commissioner of the State of Nebraska, and Hugh La Master, Assistant Attorney General of Nebraska, and O. S. Spillman, Attorney General of Nebraska, by delivering a certified copy to Hugh La Master their Attorney of record.

Dated this 11th day of January, 1923. D. H. Cronin, U. S. Marshal, By J. C. McClung, Deputy.

[File endorsement omitted.]

47 Afterwards, to-wit: On the 19th day of January, 1923, an Order Allowing Appeal, was filed in said cause, which is in words and figures following, to-wit:

In the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Order Allowing Appeal.

[Filed Jan. 19, 1923.]

On motion of Wymer Dressler, Esquire, Solicitor and Counsel for Complainant, it is hereby Ordered that an appeal to the Supreme Court of the United States from the Order and decree denying a temporary injunction in this cause heretofore filed and entered herein be and the same is hereby allowed and that a certified transcript of the record and all proceedings, including such statement of the evidence as may be allowed and filed, be forthwith transmitted to said Supreme Court of the United States.

It is further ordered that the Bond on Appeal be fixed at the sum of One Hundred Fifty Thousand and no/100 Dollars ($150,000.00), to be conditioned upon the payment to the several Defendant County Treasurers or their successors in office of the amounts of the taxes which have been levied for the year 1922 as the Court shall finally adjudicate to be due together with legal interest and penalties thereon as provided by law, and of the amounts of such taxes, interest, penalties and damages and costs which shall be ascertained to be due by this Court, the same to act as a Supersedeas Bond and also as a bond for costs and damages on appeal, as this day authorized by Order of the Court.

Dated this 16 day of January, A. D. 1923. J. W. Woodrough, District Judge. Robt. E. Lewis, Circuit Judge. Thos. C. Munger, District Judge.

[File endorsement omitted.]

48 In the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Supersedeas Bond.

[Filed Jan. 19, 1923.]

Know all men by these presents: That Chicago and North Western Railway Company, as Principal, and National Surety Company, a Corporation of the State of New York, as Surety, are held and firmly bound unto the Defendant, W. H. Osborne, Jr. as State Tax Commissioner, and the other Defendants in this case as his and their interests may appear in the sum of One Hundred Fifty

Thousand and no/100 Dollars ($150,000.00), for the payment whereof well and truly to be made to said Defendants and their successors in office, we bind ourselves, jointly and severally, firmly by these presents.

Yet upon the condition, that whereas, on the tenth day of January, 1923, the District Court of the United States for the District of Nebraska, Omaha Division, said Court being then composed of three judges, entered an injunction in the case of Chicago and North Western Railway Company vs. W. H. Osborne, Jr. as State Tax Commissioner, et al. Equity Number 942 restraining and enjoining said County Treasurers, Defendants in said suit, from collecting certain taxes claimed to be due from the Plaintiff to said Defendant Treasurers for the year 1922 in the State of Nebraska pending an appeal to the Supreme Court of the United States from an order of said Court denying a temporary injunction in said case, and Plaintiff having appealed to the Supreme Court of the United States from the order of the District Court denying Plaintiff a temporary injunction in the case.

49 Now therefore, if the Chicago and North Western Railway Company shall prosecute said appeal to effect and shall pay to said Defendant County Treasurers or their successors in office the amounts of taxes which have been levied for the year 1922 as this Court shall finally adjudicate to be due said County Treasurers from said Plaintiff, together with legal interest, damages and penalties thereon as provided by law, to be ascertained by this Court, and shall pay the amounts of such taxes, interest, penalties and damages and costs as may be adjudged against said Railway Company upon said appeal if it fails to make good its appeal, then this obligation to be void, otherwise to remain in full force and effect.

Dated this 16 day of January, A. D. 1923. Chicago and North Western Railway Company, Principal, By Wymer Dressler, Robert D. Neely, Paul S. Topping, Its Attorneys. National Surety Company, Surety, by L. M. Mielenz, Resident Vice-President, by W. H. Wheeler, Resident Assistant Secretary. (Seal.)

The foregoing bond and surety thereon are hereby approved this 16 day of January, A. D. 1923. For the court: J. W. Woodrough, District Judge. Robt. E. Lewis, Circuit Judge. Thos. C. Munger, District Judge.

[File endorsement omitted.]

50 Afterwards, to wit: On the 25th day of January, 1923, a Motion to Dismiss was filed in said cause, which is in words and figures following, to wit:

In the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Motion to Dismiss.

[Filed Jan. 25, 1923.]

Come now the defendants and move the Court to dismiss the above entitled suit for the following reasons:

1. The plaintiff had a plain, adequate and complete remedy at law for its protection against all of the alleged illegal acts charged in the petition by means of an error proceeding from the State Board of Equalization and Assessment to the Supreme Court of the State of Nebraska, which remedy it failed to pursue.
2. This suit does not involve as much as $3,000, exclusive of interest and costs, as to each defendant.
3. There is insufficiency of fact alleged in the petition to constitute a valid cause of action in equity against the defendants, or against any of them. O. S. Spillman, Attorney General of Nebraska; Hugh La Master, Asst. A'ty. Gen'l of Nebraska, Attorneys for Defendants.

[File endorsement omitted.]

51 Afterwards, to wit: On the 30th day of January, 1923, an Appearance was filed in said cause, which is in words and figures following, to wit:

In the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Appearance.

[Filed Jan. 30, 1923.]

Comes now Hugh La Master and hereby enters the appearance of all the Defendants in the above entitled cause this 10th day of January, 1923. Hugh La Master, Attorney for Defendants.

[File endorsement omitted.]

52 Afterwards, to wit: On the 30th day of January, 1923, Notice of Lodgement was filed in said cause, which is in words and figures following, to wit:

In the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Notice.

[Filed Jan. 30, 1923.]

To Hugh La Master, Counsel for Defendants:

Take notice that on the 24th day of January, 1923, Plaintiff and Appellant lodged with R. C. Hoyt, Clerk of the United States District Court Omaha, a statement of the evidence in the above entitled cause, a true copy of which is herewith served upon you.

You will be expected, within ten days, to file any additional matter which you desire to be included in said statement otherwise, at the expiration of ten days, Appellant will ask the Hon. J. W. Woodrough, United States District Judge, to sign and settle said statement of the evidence to be made a part of the record.

Dated this 24th day of January, A. D. 1923. Wymer Dressler, R. N. Van Doren, F. W. Sargent, Attorneys for Appellant.

Received a copy of this Notice and a copy of the Statement of the Evidence referred to this 24th day of January, A. D. 1923. O. S. Spillman, Atty. Gen.; Hugh La Master, Asst. Atty. Gen., Attorneys for Defendants and Appellees.

[File endorsement omitted.]

53 Chancery Subpœna. Original. Case No. 492. Equity.

Chancery Subpœna and Service.

[Filed Feb. 6, 1923.]

United States District Court, District of Nebraska, Omaha Division.

The President of the United States to D. C. Fletcher as County Treasurer of Antelope County, Nebraska; Bertha Watson as County Treasurer of Boone County, Nebraska; William Miller as County Treasurer of Butler County, Nebraska; Joe Sedlacek as County Treasurer of Colfax County, Nebraska; Fred Wackel as County Treasurer of Cuming County, Nebraska; O. E. Riggle as County Treasurer of Cherry County, Nebraska; Otto Bauman as County Treasurer of Douglas County, Nebraska; Clay Thomas as County Treasurer of Fillmore County, Nebraska; W. E. Conklin as County Treasurer of Holt County, Nebraska; A. E. Sutherland as County Treasurer of Lancaster County, Nebraska; W. L. Boettcher as County Treasurer of Platte County, Nebraska; H. E.

Patch as County Treasurer of Rock County, Nebraska; H. B. Lyons as County Treasurer of Sioux County, Nebraska; Clarence S. Marcy as County Treasurer of Sheridan County, Nebraska; Robert Gratton as County Treasurer of Stanton County, Nebraska; Agnes J. Pence as County Treasurer of Seward County, Nebraska; F. C. Cederholm as County Treasurer of Thayer County, Nebraska; Charles H. Robertson as County Treasurer of Washington County, Nebraska; Pearl B. Woodworth as County Treasurer of Adams County, Nebraska, Greeting:

You are hereby commanded to be and appear at the office of the Clerk of the District Court of the United States for the District of Nebraska, on or before the twentieth day after service of this writ, at the City of Omaha, then and there to answer the bill of complaint of Chicago and North Western Railway Company, this day filed against you, hence fail not.

Witness, The Honorable, the Judges of the District Court of the United States for the District of Nebraska, this 2nd day of January, 1923.

Issued at my office in the City of Omaha, under the Seal of said District Court, the day and year last aforesaid. R. C. Hoyt, Clerk. John Nicholson, Deputy. (Seal.)

Memorandum.—The above-named defendants to file their answer or other defense in this suit in the Clerk's office aforesaid, on or before the twentieth day after service excluding the day thereof, otherwise the bill may be taken pro confesso. R. C. Hoyt, Clerk, By John Nicholson, Deputy.

(This writ is returnable within twenty days from date of issue.)

[File endorsement omitted.]

54 Attached to said Chancery Subpœna are the following returns made by the United States Marshal:

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 14 day of January, 1923, I received this Chancery Subpœna and on the 24 day of January, 1923, I served the same upon the within-named O. Riggle, County Treasurer Cherry County, Neb., at Valentine, in Cherry County, State, and District of Nebraska, by delivering to and leaving with him personally, a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By A. M. Wright, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 14th day of January, 1923, I received this Chancery Subpœna and on the 23rd day of January, 1923, I served the same upon the within-named Clarence S. Marcy,

County Treasurer Sheridan County, at Rushville in Sheridan County, State, and District of Nebraska, by delivering to and leaving with him personally, a certified copy thereof, wtih all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By A. M. Wright, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 14 day of January, 1923, I received this Chancery Subpœna and on the 16 day of January, 1923, I served the same upon the within-named Edward B. Lyons true named, as County Treasurer Sioux County, Neb. at Harrison in Sioux County, State, and District of Nebraska, by delivering to and leaving with him personally a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By A. M. Wright, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 13th day of January, 1923, I received this Chancery Subpœna and on the 15th day of January, 1923, I served the same upon the within-named Pearl Woodworth, Treasurer of the County of Adams at Hastings, in Adams County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By Fred R. Mandeville, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 13th day of January, 1923, I received this Chancery Subpœna and on the 20th day of January, 1923, I served the same upon the within-named William D. Miller, as County Treasurer Butler County, Nebraska, at David City, in Butler County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. C. McClung, Deputy United States Marshal.

55 DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 13th day of January, 1923, I received this Chancery Subpœna and on the 19th day of January, 1923, I served the same upon the within-named Agnes Pence, as County Treasurer, Seward County, Nebraska, at Seward, in Seward County, State, and District of Nebraska, by delivering to and leaving with her, a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. C. McClung, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 13th day of January, 1923, I received this Chancery Subpœna and on the 18th day of January, 1923, I served the same upon the within-named Clay Thomas, as County Treasurer, Fillmore County, Nebraska, at Geneva, in Fillmore County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. C. McClung, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 13th day of January, 1923, I received this Chancery Subpœna and on the 18th day of January, 1923, I served the same upon the within-named Francis Cederholm, as County Treasurer, Thayer County, Nebraska at Hebron, in Thayer County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. C. McClung, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 13th day of January, 1923, I received this Chancery Subpœna and on the 19th day of January, 1923, I served the same upon the within-named Albert E. Sutherland, as County Treasurer, of Lancaster County, Nebraska, at Lincoln, in Lancaster County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. C. McClung, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 12th day of January, 1923, I received this Chancery Subpœna and on the 16th day of January, 1923, I served the same upon the within-named Robert Gratton, as County Treasurer of Stanton County, Nebraska, at Stanton in Stanton County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. A. Davis, Deputy United States Marshal.

56 DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 12th day of January, 1923, I received this Chancery Subpœna and on the 16th day of January, 1923, I served the same upon the within-named Fred Wackel, as County Treasurer of Cuming County, Nebraska, at West Point in Cuming County, State, and District of Nebraska, by delivering to and leaving with him, a certified copy thereof, with all the indorsements

thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. A. Davis, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 12th day of January, 1923, I received this Chancery Subpœna and on the 17th day of January, 1923, I served the same upon the within-named H. E. Patch, as County Treasurer of Rock County, Nebraska, at Bassett, in Rock County, State, and District of Nebraska, by delivering to and leaving with him, a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. Davis, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 12th day of January, 1923, I received this Chancery Subpœna and on the 17th day of January, 1923, I served the same upon the within-named W. E. Conklin, as County Treasurer of Holt County, Nebraska, at O'Neil in Holt County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. A. Davis, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 12th day of January, 1923, I received this Chancery Subpœna and on the 17th day of January, 1923, I served the same upon the within-named D. C. Fletcher, as County Treasurer of Antelope County, Nebraska, at Neligh, in Antelope County, State, and District of Nebraska, by delivering to and leaving with him, a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. A. Davis, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 5th day of January, 1923, I received this Chancery Subpœna and on the 5th day of January, 1923, I served the same upon the within-named Joe Sedlacek, County Treasurer Colfax County, Neb., at Schuyler, in Colfax County, State, and District of Nebraska, by delivering to and leaving with him personally, a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By Anthony J. Ruddy, Deputy United States Marshal.

57 DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 5th day of January, 1923, I received this Chancery Subpœna and on the 6th day of January, 1923, I served the same upon the within-named Bertha Watson, County Treasurer of Boone County, Neb., Albion, in Boone County,

State, and District of Nebraska, by delivering to and leaving with her personally, a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By Anthony J. Ruddy, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 5th day of January, 1923, I received this Chancery Subpœna and on the 5th day of January, 1923, I served the same upon the within-named W. L. Boettcher, County Treasurer*m* Platte County, Neb., at Columbus, in Platte County, State, and District of Nebraska, by delivering to and leaving with P. J. Schaecher, he being Deputy Treasurer and the highest officer found within my District, a certified copy thereof, with all the endorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By Anthony J. Ruddy, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 12th day of January, 1923, I received this Chancery Subpœna and on the 12th day of January, 1923, I served the same upon the within-named Otto J. Bauman, as County Treasurer, Douglas County, Nebraska, in Douglas County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. A. Davis, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 8th day of Janaury, 1923, I received this Chancery Subpœna and on the 9th day of January, 1923, I served the same upon the within-named Charles H. Robertson, as County Treasurer of Washington County, Nebraska, at Blair in Washington, County, State, and District of Nebraska, by delivering to and leaving with him, a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. A. Davis, Deputy United States Marshal.

58 Afterwards, to-wit: On the 7th day of February, A. D. 1923, a Præcipe for Transcript was filed in said cause, which is in words and figures following, to-wit:

In the District Court of the United States within and for the District of Nebraska, Omaha Division.

[Title omitted.]

Præcipe.

[Feb. 7, 1923.]

To the Clerk of said Court:

Please prepare a transcript for appeal to the Supreme Court, and include:

Petition;
Subpœna and return;
Leave to file Supplemental Bill;
Supplemental Bill;
Subpœna and return;
Appearance for all defendants;
Order denying Temporary Injunction;
Motion to Dismiss;
Application for Injunction Pending Appeal;
Order Allowing Injunction Pending Appeal;
Statement of Evidence;
Notice of Lodgement;
Appeal papers;
Præcipe for Transcript;
Dated this 30th day of January, 1923. Wymer Dressler, Attorney for Appellant.
Service accepted, this 31st day of January, 1923. O. S. Spillman, Attorney General of Nebraska; Hugh La Master, Asst. Atty. Gen., Attorney- for Appellees.

[File endorsement omitted.]

39 **Statement of Evidence.**

Afterwards, to-wit: On the 7th day of February, 1923, a Statement of Evidence was filed in said cause, which is in words and figures following, to-wit:

Index to Statement of Evidence.

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Affidavit of C. F. Balch (Plff's Ex. 1-A)	27A to 39
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Affidavit of T. A. Polleys (Plff's Joint Ex. 2)	41 to 49

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Exhibits att'd to above Affidavit, att'd at 50
Affidavit of T. A. Polleys (Plff's Joint Ex. 3) ..... 51 to 54
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60 Defendant's evidence:

Defendant's Exhibit 4, being page 471, Fourth Annual Report Nebraska State Railway Commission 372
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Mr. Lamaster's offer of above named Defendant's Exhibits 4 and 5, and colloquy pertaining thereto, as occurred on the hearing of the application for temporary injunction 374
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Digest of testimony of Don L. Love given on the trial of above entitled cases 377
Digest of testimony of Herman A. Penner given on the trial of above entitled cases 377
Digest of Defendant's Exhibit 11 (certified copy of physical valuation record Nebraska State Railway Commission with respect to C. St. P. M. & O.) 378
Digest of Defendant's Exhibit 12 (certified copy of physical valuation record Nebraska State Railway Commission with respect to C. & N. W.) 378
Digest of Defendant's Exhibit 13 (compilation of 58 Affidavits as to comparison of market value of real estate as between years 1920, 1921, 1922, compared with assessed value) 379
61 Digest of Defendant's Exhibit 14 (Affidavits of land owners as to ratio of assessed value to actual value of land) 379

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Digest of Defendant's Exhibit 16 (Affidavits of County Clerks and Registers of Deeds showing land transfers and ratio of assessed value to selling price, July 1921 to July 1922) 379

Digest of Defendant's Exhibit 17 (Affidavit of A. M. Clark as to instructions received from Tax Commissioner) 380

Digest of Defendant's Exhibit 25 (Statistics of Railway relating to taxes and Railway assessments in various States) 380

Digest of Defendant's Exhibit 26 (Certain pages of report of Department of Agriculture of Nebraska contrasting volume of crops with net return) 381

Digest of Defendant's Exhibits 28, 29 and 30 (copies of reports by United States Department of Commerce, as to decrease in commodity prices, particularly agricultural prices, during the years 1920 to 1922) 381

Digest of Defendant's Exhibit 32 (Affidavit of Osborne, Tax Commissioner, denying attempt to tax carriers unjustly, etc.) 381

Colloquy between Dressler, Lamaster, Root and Judge Lewis with reference to above Exhibit 382

Digest of Defendant's Exhibit 33 (Affidavit of Osborne, Tax Commissioner, in re Affidavit filed by Scribner showing conveyances March 1921 to April 1922.
62 Mr. Osborne claiming decrease in value of farm lands but stationary assessment thereof) .. 383

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Plaintiff's rebuttal testimony:

Plaintiff's Exhibit 6 (p. 633, Seventh Annual Report Nebraska State Railway Commission, "physical valuation of steam railroads July 1, 1913"—C. & N. W. property) ..... 384 to 386

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63 In the District Court of the United States for the District of Nebraska, Lincoln Division.

[Title omitted.]

Statement of Evidence.

Upon the hearing of the application of plaintiff for a temporary injunction before Honorable Robert E. Lewis, Circuit Judge, Honorable Thomas C. Munger, District Judge, and Honorable J. W. Wood-

rough, District Judge, at Omaha, Nebraska, beginning the 18 day of December, 1922, and continuing to and upon the 21 day of December, 1922, the following proceedings material to this appeal were had:

64 Appearances:

For the Chicago & North Western Railway Company, Mr. Wymer Dressler.

For the Chicago, St. Paul, Minneapolis & Omaha Railway Company, Mr. Wymer Dressler and Mr. R. L. Kennedy.

For the Chicago, Burlington Railroad Company, Mr. Bruce Scott, Mr. Byron Clark, Mr. Jesse L. Root, Mr. J. W. Weingarten, Mr. C. W. Krohl.

For Defendants, Mr. Clarence A. Davis, Attorney General of the State of Nebraska, and Hugh Lamaster.

Three suits were pending in this court involving the same issues. An application for temporary injunction was made in each of said suits, the three applications being heard and considered at the same time by the three judges above named. Said suits were entitled Chicago, Burlington & Quincy Railroad Company vs. W. H. Osborne, Jr., as Tax Commissioner of the State of Nebraska, et al; Chicago & Northwestern Railway Company vs. W. H. Osborne, Jr., as Tax Commissioner of the State of Nebraska, et al; and Chicago, St. Paul, Minneapolis & Omaha Railway Company vs. W. H. Osborne, Jr., as Tax Commissioner of the State of Nebraska,

65 et al.

It was stipulated in open court by the parties to the three suits that any and all evidence introduced by any of the parties should be considered as received in evidence in each of said cases so far as applicable to the issues raised therein.

Upon motion of plaintiff, Chicago & Northwestern Railway Company, leave was granted to amend the pe-tion herein by substituting in lieu of paragraph VIII the following:

"VIII. Plaintiff further alleges that the value of plaintiff's property in the State of Nebraska does not exceed $32,100,000.00 and that the value per mile of plaintiff's property does not exceed $29,129.00 per mile, and that the valuation of $38,714,373.00 for plaintiff's property as fixed by said state board of equalization is excessive by at least $6,614,373.00; that the valuation per mile of $36,475.00 as fixed by the State Board Equalization is excessive by at least $7,346.00 per mile."

Upon motion of the plaintiff, Chicago & Northwestern Railway Company, leave was granted to amend paragraph XIV of the

66 petition herein by offering to pay taxes upon 60 per cent of the valuation of its property as certified to the several county clerks and county treasurers by the State Board of Equalization for the year 1922 or upon such other proportion of such valuation as the Court might, upon final hearing, determine to be equitable and just.

Upon motion of the plaintiff, Chicago, St. Paul, Minneapolis & Omaha Railway Company, leave was granted to amend the petition herein by substituting in lieu of paragraph VIII, the following:

"VIII. Plaintiff further alleges that the value of plaintiff's property in the State of Nebraska does not exceed $7,000,000.00, and that the value per mile of plaintiff's property does not exceed $21,691.00 per mile, and that the valuation for plaintiff's property as fixed by said state Board of Equalization is excessive by at least $5,392,905.00; that the valuation per mile as fixed by said State Board of Equalization is excessive by at least $19,209.00."

It was admitted by the parties in open court that plaintiff has paid to the respective city and village officers in Nebraska all taxes assessed and levied against the plaintiffs in 1922 for city and village purposes, and such taxes are not involved in this suit.

In the opening statement of counsel for defendants it was stated
67 that the defendants had investigated land sales in forty counties in Nebraska during the period from July 1, 1921 to July 1, 1922, which showed that

"During the whole year the ratio of the assessed valuation of lands to the sale price was about 60.95 per cent. For the period ending July, 1922, that is during the first six months of the present year, the ratio of the assessed value to the sale price was 65.40 per cent."

In said opening statement counsel for defendants further stated:

"We have affidavits with reference to values from about 60 persons. They were secured through the offices of the county attorneys of the counties all over the state. They represent about—I have forgotten the exact number—about 20 counties, and they show that the ratio of assessed value to the fair market value is 74.28 per cent, that is, those affidavit figures averaged show about 74.28 per cent."

Counsel for defendants further stated:

"Now, our contention will be, your Honors, that with this basis of somewhere from 60 to 75 per cent of the actual value being the assessed value—we do not contend of course, that the assessed value is the actual value, that would be an absurdity to make that contention for any class of property, railroads included. There never has been in Nebraska an absolutely cash value of any species of property. With the value put upon the property of over 60 to 75 per cent, and as the year goes on it is an increasingly larger amount owing to the gradual decrease in the *f*alue of farm lands, that is as large a proportion, and a larger proportion than the Burlington was assessed; it is as much as the North westerned, it is not so large as the M. & O."

The following colloquy occurred:

Mr. Dressler: In view of your statement would you be will-
68 ing to stipulate and save a lot of proof that the ratio of assessment of lands to the true value was somewhere between 60 and 70 per cent?

Mr. Lamaster: No, I should not. I don't think it is 70 per cent. I said from 65 to 75 and a fraction per cent."

69 PLAINTIFF'S EVIDENCE.

Plaintiff's Exhibit 1.

The Plaintiff offered in evidence the affidavit of C. F. Balch, marked Plaintiff's Exhibit 1, which was as follows:

"STATE OF ILLINOIS,
County of Cook, ss:

I, C. F. Balch, being first duly sworn, on my oath depose and state:

I.

That I am and for more than two years last past have been the Assistant General Auditor of the Chicago and North Western Railway Company, and for ten years immediately prior thereto I was statistician for said railway company. That for a period of three years, or from September 1, 1907, to August 1, 1910, I was Examiner of Accounts for the Interstate Commerce Commission of Washington, D. C. That prior thereto I was in the service of the Chicago, Rock Island & Pacific Railway Company as Auditor of Disbursements and Special Accountant, and for about eighteen years prior thereto I was in the Accounting Department of the Chicago and Northwestern Railway Company.

II.

70 That during all of said time it has been my chief duty to familiarize myself with the method of accounting of various railway companies, and especially the Chicago and Northwestern Railway Company, and that for the past eleven years, while serving said company as statistician and assistant general auditor it has been and still is my duty to examine into the books and records of said Company and compile figures for the purpose of showing the value of said railway system as a unit and by states.

III.

That by virtue of the authority vested in me as assistant general auditor of the Chicago and Northwestern Railway Company, I have examined the records of said Railway system and compiled full, true and correct figures showing the value of said railway property, both as to the entire system and as to the State of Nebraska, for the period commencing January 1, 1916, and ending December 31, 1921; and I have been duly authorized to set forth said figures for the purpose of showing the value of this Railway Company's property for

the entire system and for the State of Nebraska, covering the period aforesaid.

IV.

That Exhibits 1 to 7, inclusive, attached to this affidavit
71 incorporated herein and made a part hereof, have been made by me and under my direction and personal supervision for the purpose of showing the value of the property of the Chicago and Northwestern Railway System from 1916 to 1921, inclusive, and especially the value of said system which should be properly allocated to the State of Nebraska for the purposes of taxation.

V.

That Exhibit No. 1, hereto attached, is a statement showing the value of the entire line of the Chicago & Northwestern Railway for the period mentioned and as represented by:

1st. The Par Value of Stocks and Bonds.

2nd. The Market Value of Stocks and Bonds.

3rd. The net Railway Operating Income capitalized at 6% per annum.

4th. The annual rental paid by the United States Government capitalized at 6%, which is the rental which was paid by the United States Government annually to the Chicago and Northwestern Railway during the period of Federal control,—from January 1, 1916, to February 29, 1920,—and which was agreed upon by the Government and the Chicago and Northwestern Railway as a fair and
72 just compensation for the use of the property.

5th. For the years 1920 and 1921 only, the amount which was allowed as the valuation of the Chicago and Northwestern Railway by the Interstate Commission in Ex Parte 74 and upon which they determined a reasonable return should be received by the Chicago and Northwestern Railway Company.

These various values are set forth for each year for the entire line in total and also per mile of road operated. Special attention is called to the fact that for the year 1920, figured on the basis of net railway operating income capitalized at six per cent, there was no net operating income, and in truth and in fact the entire system for that year was operated at a deficit, or the amount received in revenue was less than the amount actually expended in operating the system.

Attention is here directed to the lower line of this exhibit, which shows that the average value of the system, determined for the year 1916 upon the four different methods combined, was $403,229,955.00, or equivalent to $49,734.00 per mile of road; for the year
73 1917 the value arrived at by the same method was $383,875,374.00, or equivalent to $47,422.00 per mile of road; for the year 1918 the value of the entire system was $330,988,230.00, or $40,911.00 per miles of road; for 1919 the value for the entire system was $332,616,713.00, or $41,112.00 per mile of road; and for the

year 1920 the value of the entire system was $308,468,690.00, or $36,712.00 per mile of road, and for the year 1921 the value for the entire system was $328,128,903.00, or $39,052.00 per mile of road.

In the last column to the right of said exhibit are set forth figures which show the average value per mile of road of the entire system for a period of six years, determined by each of the five foregoing methods. By combining all of the resu-ts of these different methods we find the average to be $42,136.00 per miles of road.

VI.

Exhibit No. 2 is a statement showing, on the upper line, for each year from 1916 to 1921, inclusive, and an average for the six years, the valuation as shown in Exhibit No. 1 as represented in the par value of stocks and bonds of the Chicago and Northwestern Railway Company outstanding in the hands of the public on December 31st of the years aforesaid. Taking the year 1916 for an ex-
74 ample this value has been apportioned to the State of Nebraska on six different bases, to-wit:

1st. On line 2, Railway Operating Revenue. This allocates to the State of Nebraska eight per cent of the value of the entire line, upon the theory that railway operating revenues in the State of Nebraska for the year 1916 were eight per cent of the railway operating revenues of the entire system. The railway operating revenues allocated to the State of Nebraska were those revenues arising from all traffic, whether passenger or freight, originating and terminating in the State of Nebraska, plus a mileage proportion of all other traffic which either originated in the State of Nebraska and terminated in some other State, or originated in some other State and terminated in the State of Nebraska, or which originated and terminated in some other States but passed through the State of Nebraska,—this method of assignment being that required of this company by the State of Minnesota for its use in determining the taxes of said State according to the statutes of that State governing this subject, and this method is employed by this company
75 in all of its assignments of revenue to the different States in which it operates. The revenues so assigned in the year 1916 were 8% of the total operating revenues of the Chicago and Northwestern Railway Company. By applying this percentage of 8 to the valuation of $356,484,000, we determine the value in the State of Nebraska to be $28,678,720 for the year 1916. On the same line of this exhibit, to the right of the year 1916, is shown separately for each of the years 1917, 1918, 1919, 1920 and 1921, as determined by the same process for each year, the value of the property of this Company allocated to the State of Nebraska, and in the next column to the right is shown the Accumulated Total, then the Average Value for six years, and the Average per mile of Road for the six year period.

2nd. On line 3 of this exhibit is shown the value of the property in Nebraska as determined by taking that percentage of the total value of the entire line which the miles of line operated in the State

of Nebraska bear to the miles of line operated of the entire system. In the year 1916, this was 13.59 per cent of the entire system, and this percentage applied to the value of $358,484,000.00 determines a value in the state of Nebraska of $48,717,976.00. To the
76 right of this figure on line 3 are shown the values for the years 1917, 1918, 1919, 1920, and 1921, determined in the same manner. To the right of this the accumulated total, the Average for the six years, and the value per mile of road in the State of Nebraska, as so determined.

3rd. On line 4 is shown the value in the State of Nebraska as determined by taking the total miles of all track operated in the state of Nebraska and comparing it with the total miles of all track operated in the entire system. For the year 1916 it was found that 10.03 per cent of all tracks operated was in the state of Nebraska, and applying this percentage to the total value for the year 1916 of $358,484,000 we determined that the total value of the property in the State of Nebraska is $35,955,945. To the right of this figure on line 4 is shown the valñe for each of the years 1917, 1918, 1919, 1920, and 1921, together with the accumulated total, the average for six years, and the average per mile of road in the State of Nebraska, as so determined.

4th. On line 5 is shown the value in the State of Nebraska as determined by taking that proportion of the transportation train miles which were performed in the state of Nebraska com-
77 pared with the transportation train miles performed on the entire system. In the year 1916 it was found that 9.28 per cent of the total transportation train miles was performed in the State of Nebraska, and this percentage applied to the total valuation of $358,484,000 shows the value in the State of Nebraska to be $33,267,315. To the right of this figure on line 5 is shown the value for the years 1917, 1918, 1919, 1920, and 1921, determined in the same manner, and to the right of this the accumulated total, the average for the six years, and the average per mile of road in the State of Nebraska.

5th. On line 6 is shown the value in the state of Nebraska as determined by the traffic units performed in the State of Nebraska as compared with the traffic units performed on the entire system. The traffic units are the tons one mile of revenue freight carried and the passengers one mile of the passengers carried. The total tons one mile of the entire line and the passengers one mile of the entire line were combined, and the total tons one mile and the passengers one mile in the State of Nebraska were combined, and the percentage relation of that combined total in the state of Nebraska to the combined total of the entire system was found to be 5.08 per cent for the year 1916, and this percentage applied
78 to the total valuation of $358,484,000, determined the value in the state of Nebraska on this basis to be $18,210,987. To the right of this amount on line 6 are shown the values for each of the years 1917, 1918, 1919, 1920 and 1921, determined in the same manner, and to the right of this the accumulated total, the average for the six years, and the average per mile of road in the State of Nebraska.

6th. On line 7 is shown the value in the state of Nebraska as determined by the "use of property" in the state of Nebraska. This basis is described as follows:

The valuation of the entire property was first analyzed and classified into five groups, as follows:

Valuation of locomotives.
" " Passenger cars.
" " Freight cars.
" " Work cars.
" " all other property.

The valuation of locomotives was then assigned to the State of Nebraska on the basis of the proportion of the locomotive miles in the State of Nebraska as compared with the locomotive miles of the entire system. The value of the passenger cars was assigned to the state of Nebraska on the basis of the proportion of passenger miles performed in the State of Nebraska compared with the pas-
79 senger car miles of the entire system. The value of the freight cars was assigned to the State of Nebraska in the proportion which the freight car mileage in the State of Nebraska bears to the freight car mileage of the entire line. The value of work equipment was assigned to the State of Nebraska on the basis of the proportion that the combined passenger and freight car miles in the State of Nebraska bear to the combined freight and passenger car miles of the entire system. Aggregating these values, which represent the use of all classes of equipment, and finding that proportion which the aggregate value in the State of Nebraska bears to the aggregate value of the entire line to be 7.20 per cent for the year 1916, and applying this percentage to the total valuation of $358,484,000 determined the value in the State of Nebraska on this basis to be $25,810,848. To the right of this amount on line 7 are shown the values for each of the years 1917, 1918, 1919, 1920, and 1921, determined in the same manner, and to the right of this the accumulated total, the average for the six years, and the average per mile of road in the State of Nebraska.

7th. On line 8 is shown, for each year, the combined total of the values as determined by the six different methods above
80 enumerated. By dividing this total by 6, we find the average valuation. In the year 1916 this valuation is $31,773,632. Dividing this by the mileage of road operated in the state of Nebraska, which is 1,102.05, we find the value per mile of road operated to be $28,831; for the year 1917, we find it to be $30,645; for the year 1918, $32,000; for the year 1919, $33,705; for the year 1920, $33,877; and for the year 1921, $34,878, or an average for the six years as determined by the six different methods of allocation aforesaid of $32,322 per mile of road.

VII.

On Exhibit 3, line 1, is shown the value of the entire Chicago and North Western System for each of the years enumerated, as

represented by the market value of all its stocks and bonds in the hands of the public. This value has been determined by taking the high and low quotations for each month from the market quotations of these stocks and bonds, and applying the average for each year to the total amount of each separate security outstanding. Following this method, the total value of the entire system as represented by the market value of its stocks and bonds in the hands of the public is found to be—

For the year 1916	$406,336,070
" " " 1917	382,417,649
" " " 1918	350,845,542
" " " 1919	352,606,093
81	
For the year 1920	$335,072,088
" " " 1921	319,686,771

the average for the six years being $357,827,369, or $43,648 per mile of road.

These values have been allocated, each year separately, to the State of Nebraska on the following bases:

1st. Railway operating Revenues.
2nd. Miles of Line Operated.
3rd. Miles of all Track Operated.
4th. Transportation Train Miles.
5th. Traffic Units.
6th. Use of Property.

In the use of each of these six different bases, the method following in each instance is that described in computing Exhibit No. 2.

The six different amounts so determined combined; and an average of the same found by dividing *ty* 6, gives the valuation in the State of Nebraska, as follows:

	Total value (line 9).	Value per mile of road (line 11).
For the year 1916	$36,014,920	$32,680
" " " 1917	34,946,600	31,711
" " " 1918	32,640,330	29,618
" " " 1919	34,478,999	31,286
" " " 1920	30,988,583	28,151
" " " 1921	30,226,385	27,459
Average for the 6 years	33,215,970	30,152

The market value of these stocks and bonds should be given serious consideration because it represents the value placed upon this property by the purchasing public, and if it had been
82 possible to have acquired all of the stocks and bonds at the market quotations of these dates, the ownership of the entire property could have been acquired at this price.

VIII.

On Exhibit No. 4, line 1, will be found the valuation of the entire system as calculated by capitalizing the net railway operating income of the entire system at six per cent for each year mentioned. The net railway operating income as used in this exhibit is determined by taking the railway operating revenue, deducting therefrom the railway operating expenses, railway tax accruals, uncollectible railway revenue and the net charge or credit, from the charges to hire of equipment, and joint facility rentals, leaving as the net railway operating income that amount which the corporation received and which is applicable to its corporate needs, dividends, interest, etc. This amount capitalized at six per cent produced the following values for the entire system:

For the year	1916	$461,416,157
" " "	1917	396,836,754
" " "	1918	207,357,286
" " "	1919	211,312,501
" " "	1920 the line was operated at a deficit and no value shown.	
" " "	1921	110,852,283

The average for the six years was $231,295,831, or an average per mile of road of $28,214. These values have been allocated,
83 each year separately, to the State of Nebraska on six different bases, as follows:

1st. Railway operating Revenues.
2nd. Miles of line operated.
3rd. Miles of all Track Operated.
4th. Transportation Train Miles.
5th. Traffic Units.
6th. Use of Property.

In the use of each of these different bases, the method followed in each instance is that described in computing Exhibit No. 2.

The six amounts so determined were added and divided by 6, thus producing a valuation in the State of Nebraska, as follows:

		Total value (line 9).	Value per mile of road (line 11).
For the year	1916	$40,896,852	$37,110
" " "	1917	36,264,265	32,906
" " "	1918	19,291,140	17,505
" " "	1919	20,662,841	18,749
" " "	1920	000	000
" " "	1921	10,481,083	9,521
Average for the 6 years		21,866,030	19,304

IX.

On Exhibit No. 5, line 1, will be found the values as shown on line 5 of Exhibit No. 1. The value of the entire line is calculated by capitalizing at six per cent the annual rental paid by the Government to the Chicago and North Western Railway for the use of its property during the period from January 1, 1918, to Feb-
84 ruary 29, 1920. This rental payment was based upon the operating results of the three years ending June 30, 1917, which included the year 1916 which was the most prosperous year in the history of this line. The net operating income obtained through the operation of the system during the year 1916, being greater than that ever obtained by this system in any other one year, the government rental was based upon this factor of net operating income. Upon this basis we find the valuation of the Chicago and North Western Railway System to be as follows:

For the year	1916	$386,683,593
" " "	1917	386,683,593
" " "	1918	386,683,593
" " "	1919	386,683,593
" " "	1920	389,400,476
" " "	1921	389,400,476

The average for the six years was $387,589,221, or an average per mile of road of $47,278. These values have been allocated, each year separately, to the State of Nebraska, on six different bases, as follows:

1st. Railway Operating Revenues.
2nd. Miles of Line Operated.
3rd. Miles of All Track Operated.
4th. Transportation Train Miles.
5th. Traffic Units.
6th. Use of Property.

In the use of each of these six different bases, the method followed in each instance is that described in computing Exhibit No. 2.
85 Adding together the six amounts so determined and dividing by 6, we find the value in the State of Nebraska to be as follows:

		Total value (line 9).	Value per mile of road (line 11).
For the year	1916	$34,273,056	$31,099
For the year	1917	35,336,435	32,064
" " "	1918	35,974,463	32,643
" " "	1919	37,811,211	34,310
" " "	1920	36,013,054	32,715
" " "	1921	36,817,815	33,446
Average for the 6 years		36,037,672	32,713

X.

On Exhibit No. 6, line 1, is shown the value of the entire system as claimed in Ex Parte 74 to be the value upon which the Interstate Commerce Commission should base their action in determining the six per cent return to be used as their basis in prescribing reasonable rates. This amount is $451,433,733. The Interstate Commerce Commission, in determining the values upon which they would base their calculations, stated a valuation, as claimed by the carriers of the western Group of $8,818,454,872, but allowed the carriers in the Western Group a valuation of $8,100,000,000 as that value upon which they were entitled to a reasonable return. The percentage reduction arrived at by using these two amounts is 8.15 per cent. Applying this percentage of reduction so de-
86 termined by the Interstate Commerce Commission in Ex Parte 74 to the amount claimed by the Chicago and North Western Railway of $451,433,733, we find a valuation of $414,641,884, which, according to the decision of the Interstate Commerce Commission, is the amount determined by them as the valuation upon which the Chicago and Northwestern Railway is entitled to a fair return. This valuation for the years 1920 and 1921 has been apportioned to the State of Nebraska on the following bases:

1st. Railway Operating Revenues.
2nd. Miles of Line Operated.
3rd. Miles of All Track Operated.
4th. Transportation Train Miles.
5th. Traffic Units.
6th. Use of Property.

In the use of each of these six different bases, the method followed in each instance is that described in computing Exhibit No. 2.

XI.

Exhibit No. 7 is a recapitulation of these different values arrived at by the different methods of allocation applied to the different valuations as determined in the foregoing exhibits, showing for each of the different processes the aggregate total valuation in the State of Nebraska and the valuation per mile of road.
87 Dividing the accumulated total by 26, we find that the average valuation arrived at by a composite of all of these different processes for the State of Nebraska is a total of $32,088,874, or $29,129 per mile of road.

By comparing this value per mile of road of $29,129 with the ral-tive figure for the entire line of $42,136 (See Exhibit 1), it will be noted that the property of this company in the State of Nebraska has a value per mile of road of 68.4 per cent of the average of the entire line. This conclusion is entirely consistent with the percentages shown in the lower portion of Exhibit 2, which indicates that the transportation activities of the Chicago and North Western Railway in the State of Nebraska are considerably less than the

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Chicago and North Western Railway Company.

Exhibits Compiled by C. F. Balch Relating to Nebraska Taxes.—Hearing of May, 1922.

90

Exhibit No. 1 to Plaintiff's Exhibit 1.

Chicago and North Western Railway Company.

Value of Road Operated.

Entire Line.

Value of entire line as represented by Exhibit No.	1916.	1917.	1918.	1919.	1920.	
2. Par Value of Stocks & Bonds	$358,484,000	$369,563,500	$379,066,500	$379,862,500	$403,229,000	$
3. Market " " " " "	406,336,070	382,417,649	350,845,542	352,606,093	335,072,088	
4. Net Railway Operating Income Capitalized at 6%	461,416,157	396,836,754	207,357,286	211,312,504	000,000	
5. Annual Rental Paid by Government Capitalized at 6%.	386,683,593	386,683,593	386,683,593	386,683,593	389,400,476	
6. Amount allowed in Ex Parte 74	.....	.....	.....	.....	414,641,884	
Total	$1,612,919,820	$1,535,501,496	$1,323,952,921	$1,330,464,690	$1,542,343,448	$1,
Average of above	$403,229,955	$383,875,374	$330,988,230	$332,616,173	$308,468,690	$

Value Per Mile of Road Operated.

Miles of Road Operated	8,107.82	8,094.95	8,090.45	8,090.45	8,402.28	
2. Par Value of Stocks & Bonds	$44,215	$45,654	$46,854	$46,952	$47,990	
3. Market " " " " "	50,116	47,242	43,365	43,583	39,879	
4. Net Railway Operating Income Capitalized at 6%	56,910	49,022	25,630	26,119	00,000	
5. Annual Rental Capitaiized at 6%	47,693	47,768	47,795	47,795	46,344	
6. Amount allowed in Ex Parte 74	.....	.....	.....	.....	49,349	
Total	$198,934	$189,686	$163,644	$164,449	$183,562	
Average of above	$49,734	$47,422	$40,911	$41,112	$36,712	

Accounting Department
B File U-80, 4/26/22.

—5 Year Average 1917 to 1921 Incl.—

$896,603 divided by 22 items equals $40,755 $1,095,537

$7,372,907,069 divided by 22 items equals $335,132,139 $8,985,826,880

*2 Year Average.

Chicago and North Western Railway Company.

Exhibits Compiled by C. F. Balch Relating to Nebraska Taxes.—Hearing of May, 1922.

Exhibit No. 1 to Plaintiff's Exhibit 1.

Chicago and North Western Railway Company.

Value of Road Operated.

Entire Line.

No.	1916.	1917.	1918.	1919.	1920.	1921.	Accumulated total.	Average for 6 years.
.....	$358,484,000	$369,563,500	$379,066,500	$379,862,500	$403,229,000	$406,063,100	$2,296,268,600	$382,711,433
.....	406,336,070	382,417,649	350,845,542	352,606,093	335,07 ,088	319,686,771	2,146,964,213	357,827,369
at 6%....	461,416,157	396,836,754	207,357,286	211,312,504	000,000	110,852,283	1,387,774,984	231,295,831
ed at 6%.	386,683,593	386,683,593	386,683,593	386,683,593	389,400,476	389,400,476	2,325,535,324	387,589,221
.....	.....	.....	.....	.....	414,641,884	414,641,884	829,283,768	*414,641,884
.....	$1,612,919,820	$1,535,501,496	$1,323,952,921	$1,330,464,690	$1,542,343,448	$1,640,644,514	$8,985,826,889	.....
.....	$403,229,955	$383,875,374	$330,988,230	$332,616,173	$308,468,690	$328,128,903	.....	$345,608,727

Value Per Mile of Road Operated.

.....	8,107.82	8,094.95	8,090.45	8,090.45	8,402.28	8,402.28	49,188.23	8,198.04
.....	$44,215	$45,654	$46,854	$46,952	$47,990	$48,328	$279,993	$46,666
.....	50,116	47,242	43,365	43,583	39,879	38,048	262,233	43,706
.....	56,910	49,022	25,630	26,119	00,000	13,193	170,874	28,479
at 6%....	47,693	47,768	47,795	47,795	46,344	46,344	283,739	47,290
.....	.....	.....	.....	.....	49,349	49,349	98,698	*49,349
.....	$198,934	$189,686	$163,644	$164,449	$183,562	$195,262	$1,095,537	.....
.....	$49,734	$47,422	$40,911	$41,112	$36,712	$39,052	.....	$42,136

—5 Year Average 1917 to 1921 Incl.—

$896,603 divided by 22 items equals $40,755

$7,372,907,069 divided by 22 items equals $335,132,139

—6 Year Average—

$1,095,537 divided by 26 items equals $42,136

$8,985,826,889 divided by 26 items equals $345,608,727

Exhibit No. 2 to Plaintiff's Exhibit 1.

Chicago and North Western Railway Company.

Assignment of Property Value to State of Nebraska.

	1916.	1917.	1918.	1919.	1920.	1921.
1. Value of Entire Line as represented by Par Value of Stocks and Bonds	$358,484,000	$369,563,500	$379,066,500	$379,862,500	$403,229,000	$406,063,1
Apportioned to State of Nebraska on basis of:						
2. Railway Operating Revenues	$28,678,720	$30,636,814	$31,272,986	$33,465,886	$32,177,674	$34,515,3
3. Miles of line operated	48,717,976	50,334,549	51,628,857	51,737,273	52,822,999	53,194,2
4. Miles of all track operated	35,955,945	37,843,302	38,816,410	38,897,920	40,242,254	40,606,3
5. Transportation Train Miles	33,267,315	34,406,362	37,906,650	41,139,109	41,371,295	41,296,6
6. Traffic Units	18,210,987	20,289,036	20,962,377	22,905,709	22,661,470	25,622,5
7. Use of Property	25,810,848	29,121,604	31,007,640	34,719,433	34,476,080	35,124,4
8. Total	$190,641,791	$202,631,667	$211,594,920	$222,865,330	$223,751,772	$230,359,5
9. Value State of Nebr. (Avg. of Six)	31,773,632	33,771,944	35,265,820	37,144,222	37,291,962	38,393,2
10. Miles of Road Operated in Nebr	1,102.05	1,102.05	1,102.05	1,102.05	1,100.80	1,100.8
11. Value per Mile of Road Operated	$28,831	$30,645	$32,000	$33,705	$33,877	$34,87
Ratios allotted to State of Nebr.:						
12. Railway Operating Revenues	8.00	8.29	8.25	8.81	7.98	8.4
13. Miles of line Operated	13.59	13.62	13.62	13.62	13.10	13.1
14. Miles of all track Operated	10.03	10.24	10.24	10.24	9.98	10.0
15. Transportation Train Miles	9.28	9.31	10.00	10.83	10.26	10.1
16. Traffic Units	5.08	5.49	5.53	6.03	5.62	6.2
17. Use of Property	7.20	7.88	8.18	9.14	8.55	8.6

Accounting Department B File U-80 4/24/22.

Exhibit No. 2 to Plaintiff's Exhibit 1.

Chicago and North Western Railway Company.

Assignment of Property Value to State of Nebraska.

1916.	1917.	1918.	1919.	1920.	1921.	Accumulated total.	Average for six years.	Average per mile of road.	
358,484,000	$369,563,500	$379,066,500	$379,862,500	$403,229,000	$406,063,100	$2,296,268,600	$382,711,433	$46,683	Entire Line
$28,678,720	$30,636,814	$31,272,986	$33,465,886	$32,177,674	$34,515,364	$190,747,444	$31,791,241	$28,859	Nebr.
48,717,976	50,334,549	51,628,857	51,737,273	52,822,999	53,194,266	308,435,920	51,405,987	46,664	"
35,955,945	37,843,302	38,816,410	38,897,920	40,242,254	40,606,310	232,362,141	38,727,023	35,154	"
33,267,315	34,406,362	37,906,650	41,139,109	41,371,295	41,296,617	229,387,348	38,231,225	34,704	"
18,210,987	20,289,036	20,962,377	22,905,709	22,661,470	25,622,582	130,652,161	21,775,360	19,766	"
25,810,848	29,121,604	31,007,640	34,719,433	34,476,080	35,124,458	190,260,063	31,710,010	28,785	"
190,641,791	$202,631,667	$211,594,920	$222,865,330	$223,751,772	$230,359,597	$1,281,845,077	$213,640,846	193,932	"
31,773,632	33,771,944	35,265,820	37,144,222	37,291,962	38,393,266	213,640,846	35,606,808	32,322	"
1,102.05	1,102.05	1,102.05	1,102.05	1,100.80	1,100.80	6,609.80	1,101.63	.....	
$28,831	$30,645	$32,000	$33,705	$33,877	$34,878	.....	$32,322	.....	
8.00	8.29	8.25	8.81	7.98	8.50	.....	.....	.....	
13.59	13.62	13.62	13.62	13.10	13.10	.....	.....	.....	
10.03	10.24	10.24	10.24	9.98	10.00	.....	.....	.....	
9.28	9.31	10.00	10.83	10.26	10.17	.....	.....	.....	
5.08	5.49	5.53	6.03	5.62	6.31	.....	.....	.....	
7.20	7.88	8.18	9.14	8.55	8.65	.....	.....	.....	

Exhibit No. 3 to Plaintiff's Exhibit 1.

Chicago and North Western Railway Company.

Assignment of Property Value to State of Nebraska.

	1916.	1917.	1918.	1919.	1920.	192
1. Value of Entire Line as represented by Market Value of Stocks & Bonds	$406,336,070	$382,417,649	$350,845,542	$352,606,093	$335,072,088	$319,68
Apportioned to State of Nebraska on basis of:						
2. Railway Operating Revenues	$32,506,886	$31,702,423	$28,944,757	$31,064,597	$26,738,752	$27,17
3. Miles of line Operated	55,221,072	52,085,284	47,785,163	48,024,950	43,894,444	41,87
4. Miles of all track Operated	40,755,508	39,159,567	35,926,583	36,106,864	33,440,194	31,96
5. Transportation Train Miles	37,707,987	35,603,083	35,084,554	38,187,240	34,378,396	32,51
6. Traffic Units	20,641,872	20,994,729	19,401,758	21,262,147	18,831,051	20,17
7. Use of Property	29,256,197	30,134,511	28,699,165	32,228,197	28,648,663	27,65
8. Total	$216,089,522	$209,679,597	$195,841,980	$206,873,995	$185,931,500	$181,35
9. Value State of Nebr. (Average of 6)	$36,014,920	$34,946,600	$32,640,330	$34,478,999	$30,988,583	$30,22
10. Miles of Road Operated in Nebraska	1,102.05	1,102.05	1,102.05	1,102.05	1,100.80	1,
11. Value per Mile of Road Operated	$32,680	$31,711	$29,618	$31,286	$28,151	$2

Accounting Department B File U-80, 4/27/22.

Exhibit No. 3 to Plaintiff's Exhibit 1.

Chicago and North Western Railway Company.

Assignment of Property Value to State of Nebraska.

1916.	1917.	1918.	1919.	1920.	1921.	Accumulated total.	Average for 6 years.	Average per mile of road.	
06,336,070	$382,417,649	$350,845,542	$352,606,093	$335,072,088	$319,686,771	$2,146,964,213	$357,827,369	$43,648	Entire Line
32,506,886	$31,702,423	$28,944,757	$31,064,597	$26,738,752	$27,173,376	$178,130,791	$29,688,465	26,950	Nebr.
55,221,072	52,085,284	47,785,163	48,024,950	43,894,444	41,878,967	288,889,880	48,148,313	43,706	"
40,755,508	39,159,567	35,926,583	36,106,864	33,440,194	31,968,677	217,357,393	36,226,232	32,884	"
37,707,987	35,603,083	35,084,554	38,187,240	34,378,396	32,512,145	213,473,405	35,578,901	32,297	"
20,641,872	20,994,729	19,401,758	21,262,147	18,831,051	20,172,235	121,303,792	20,217,299	18,352	"
29,256,197	30,134,511	28,699,165	32,228,197	28,648,663	27,652,906	176,619,639	29,436,607	26,721	"
6,089,522	$209,679,597	$195,841,980	$206,873,995	$185,931,500	$181,358,306	$1,195,774,900	$199,295,817	$180,910	"
36,014,920	$34,946,600	$32,640,330	$34,478,999	$30,988,583	$30,226,385	$199,295,817	$33,215,970	$30,152	"
1,102.05	1,102.05	1,102.05	1,102.05	1,100.80	1,100.80	6,609.80	1,101.63	.....	
$32,680	$31,711	$29,618	$31,286	$28,151	$27,459	.....	$30,152	.....	

Exhibit No. 4 to Plaintiff's Exhibit 1.

Chicago and North Western Railway Company.

Assignment of Property Values to State of Nebraska.

	1916.	1917.	1918.	1919.	1920.	
1. Value of Entire Line as represented by Net Railway Operating Income capitalized at 6%.....	$461,416,157	$396,836,754	$207,357,286	$211,312,504	000,000	$1
Apportioned to State of Nebraska on basis of						
2. Railway Operating Revenue.....	$36,913,292	$32,897,767	$17,106,976	$18,616,632	.....	$
3. Miles of line Operated.....	62,706,456	54,049,166	28,242,062	28,780,763	.....	1
4. Miles of all track Operated.....	46,280,041	40,638,084	21,233,386	21,638,400	.....	1
5. Transportation Train Miles.....	42,819,419	36,945,502	20,735,729	22,885,144	.....	1
6. Traffic Units	23,439,941	21,786,338	11,466,858	12,742,144	.....	
7. Use of Property.....	33,221,963	31,270,736	16,961,826	19,313,963	.....	
8. Total	245,381,112	217,585,593	115,746,837	123,977,046	.....	6
9. Value State of Nebr. (Avg. of 6).....	40,896,852	36,264,265	19,291,140	20,662,841	.....	1
10. Miles of Road Operated in Nebraska.....	1,102.05	1,102.05	1,102.05	1,102.05	1,102.05	
11. Value per Mile of Road Operated.....	$37,110	$32,906	$17,505	$18,749	.....	

Accounting Department.
B File U-80, 4/24/22.

Exhibit No. 4 to Plaintiff's Exhibit 1.

Chicago and North Western Railway Company.

Assignment of Property Values to State of Nebraska.

1916.	1917.	1918.	1919.	1920.	1921.	Accumulated total.	Average for six years.	Average mile of road.	
$461,416,157	$396,836,754	$207,357,286	$211,312,504	000,000	$110,852,283	$1,387,774,984	$231,295,831	$28,214	Entire Line
$36,913,292	$32,897,767	$17,106,976	$18,616,632	.....	$9,422,444	$114,957,111	$19,159,519	$17,392	Nebr.
62,706,456	54,049,166	28,242,062	28,780,763	.....	14,521,649	188,300,096	31,383,349	28,488	"
46,280,041	40,638,084	21,233,386	21,638,400	.....	11,085,228	140,873,139	23,478,857	21,313	"
42,819,419	36,945,502	20,735,729	22,885,144	.....	11,273,677	134,659,471	22,443,245	20,373	"
23,439,941	21,786,338	11,466,858	12,742,144	.....	6,994,779	76,430,060	12,738,343	11,563	"
33,221,963	31,270,736	16,961,826	19,313,963	.....	9,588,722	110,357,210	18,392,868	16,696	"
245,381,112	217,585,593	115,746,837	123,977,046	.....	62,886,499	765,577,087	127,596,181	115,825	"
40,896,852	36,264,265	19,291,140	20,662,841	.....	10,481,083	127,596,181	21,266,030	19,304	"
1,102.05	1,102.05	1,102.05	1,102.05	1,102.05	1,100.80	6,609.80	1,101.63	.....	
$37,110	$32,906	$17,505	$18,749	.....	$9,521	.....	$19,304	.....	

Exhibit No. 5 to Plaintiff's Exhibit 1.

Chicago and North Western Railway Company.

Assignment of Property Value to State of Nebraska.

	1916.	1917.	1918.	1919.	1920.	192
1. Value of Entire Line as calculated by Annual Rental paid by Government Capitalized at 6%..	$386,683,593	$386,683,593	$386,683,593	$386,683,593	$389,400,476	$389,40
Apportioned to State of Nebraska on basis of						
2. Railway Operating Revenues.....	$30,934,687	$32,056,070	$31,901,396	$34,066,825	$31,074,158	$33,09
3. Miles of line Operated.....	52,550,300	52,666,305	52,666,305	52,666,305	51,011,462	51,01
4. Miles of all track Operated.....	38,784,364	39,596,400	39,596,400	39,596,400	38,862,167	38,94
5. Transportation Train Miles.....	35,884,237	36,000,242	38,668,359	41,877,833	39,952,489	39,60
6. Traffic Units	19,643,526	21,228,929	21,383,603	23,317,021	21,884,307	24,57
7. Use of Property.....	27,841,219	30,470,667	31,630,718	35,342,880	33,293,741	33,68
8. Total	$205,638,333	$212,018,613	$215,846,781	$226,867,264	$216,078,324	$220,90
9. Value State of Nebr. (Avg. of 6).....	$34,273,056	$35,336,435	$35,974,463	$37,811,211	$36,013,054	$36,81
10. Miles of Road Operated in Nebr.....	1,102.05	1,102.05	1,102.05	1,102.05	1,102.05	1,10
11. Value per Mile of Road Operated.....	$31,099	$32,064	$32,643	$34,310	$32,715	$3

Accounting Department.
B File U-80, 4/24/22.

Exhibit No. 5 to Plaintiff's Exhibit 1.

Chicago and North Western Railway Company.

Assignment of Property Value to State of Nebraska.

1916.	1917.	1918.	1919.	1920.	1921.	Accumulated total.	Average for six years.	Average mile of road.	
$386,683,593	$386,683,593	$386,683,593	$386,683,593	$389,400,476	$389,400,476	$2,325,535,324	$387,589,221	$47,278	Entire Line
$30,934,687	$32,056,070	$31,901,396	$34,066,825	$31,074,158	$33,099,040	$193,132,176	$32,188,696	$29,219	Nebr.
52,550,300	52,666,305	52,666,305	52,666,305	51,011,462	51,011,462	312,572,139	52,095,357	47,289	"
38,784,364	39,596,400	39,596,400	39,596,400	38,862,167	38,940,048	235,375,779	39,229,296	35,610	"
35,884,237	36,000,242	38,668,359	41,877,833	39,952,489	39,602,028	231,985,188	38,664,198	35,097	"
19,643,526	21,228,929	21,383,603	23,317,021	21,884,307	24,571,170	132,028,556	22,004,759	19,975	"
27,841,219	30,470,667	31,630,718	35,342,880	33,293,741	33,683,141	192,262,366	32,043,728	29,088	"
$205,638,333	$212,018,613	$215,846,781	$226,867,264	$216,078,324	$220,906,889	$1,297,356,204	$216,226,034	$196,278	"
$34,273,056	$35,336,435	$35,974,463	$37,811,211	$36,013,054	$36,817,815	$216,226,034	$36,037,672	$32,713	"
1,102.05	1,102.05	1,102.05	1,102.05	1,102.05	1,100.80	6,609.80	1,101.63	.....	
$31,099	$32,064	$32,643	$34,310	$32,715	$33,446	.....	$32,713	.....	

Exhibit No. 6 to Plaintiff's Exhibit 1.

Chicago and North Western Railway Company.

Assignment of Property Value to State of Nebraska.

	1920.	1921.	Accumulated total.	Average for two years.	Average per mile of road.	
1. Value of Entire Line as claimed in Ex Parte 74..	$451,433,733	$451,433,733	$902,867,466	$451,433,733	$53,728	
2. *Value of Entire Line as allowed by Interstate Commerce Commission in Ex Parte 74.....	$414,641,884	$414,641,884	$829,283,768	$414,641,884	$49,349	Entire Line.
Apportioned to State of Neb. on basis of—						
3. Railway Operating Revenues.....	$33,088,422	$35,244,560	$68,332,982	$34,166,491	$31,038	Nebraska.
4. Miles of line Operated.....	54,318,087	54,318,087	108,636,174	54,318,087	49,344	"
5. Miles of all track Operated.....	41,381,260	41,464,188	82,845,448	41,422,724	37,630	"
6. Transportation Train Miles.....	42,542,257	42,169,080	84,711,337	42,355,668	38,477	"
7. Traffic Units	23,302,874	26,163,903	49,466,777	24,733,389	22,468	"
8. Use of Property.....	35,451,881	35,866,523	71,318,404	35,659,202	32,394	"
9. Total	$230,084,781	$235,226,341	$465,311,122	$232,655,561	$211,351	"
10. Value State of Nebraska (Average of Six).....	$38,347,464	$39,204,390	$77,551,854	$38,775,927	$35,225	
11. Miles of Road Operated in Nebraska.....	1,100.80	1,100.80	2,201.60	1,100.80	.....	
12. Value per Mile of Road Operated.....	$34,836	$35,614	$.....	$35,225	.....	

Accounting Department B File U-80, 4/24/22.

*Value of all lines in Western District as claimed by Carriers was reduced 8.15% by the Interstate Commerce Commission, and the reduced value was taken as the basis upon which a reasonable return should be calculated.

Exhibit No. 7 to Plaintiff's Exhibit 1.

Chicago and North Western Railway Company.

Recapitulation of Values of Railway Property, State of Nebraska.

Value of Railway property in Nebraska as determined from Exhibit No.	1916.	1917.	1918.	1919.	1920.
2. Par Value of Stocks & Bonds	$31,773,632	$33,771,944	$35,265,820	$37,144,222	$37,291,962
3. Market " " " " "	36,014,920	34,946,600	32,640,330	34,478,999	30,988,583
4. Net Railway Operating Income Capitalized at 6%	40,896,852	36,264,265	19,291,140	20,662,841	000,000
5. Annual Rental Paid by Government Capitalized at 6%	34,273,056	35,336,435	35,974,463	37,811,211	36,013,054
6. Amount allowed in Ex Parte 74	.....	.....	.....	.....	38,347,464
Total	$142,958,460	$140,319,244	$123,171,753	$130,097,273	$142,641,063
Average of above	$35,739,615	$35,079,811	$30,792,938	$32,524,318	$28,528,213
		Per Mile of Road.			
2. Par value of Stocks & Bonds	$28,831	$30,645	$32,000	$33,705	$33,877
3. Market " " " " "	32,680	31,711	29,618	31,286	28,151
4. Net Railway Operating Income Capitalized at 6%	37,110	32,906	17,505	18,749	000,000
5. Annual Rental paid by Government Capitalized at 6%	31,099	32,064	32,643	34,310	32,715
6. Amount allowed in Ex Parte 74	.....	.....	.....	.....	34,836
Total	$129,720	$127,326	$111,766	$118,050	$129,579
Average of above	$32,430	$31,832	$27,942	$29,513	$25,916

Accounting Department B File U-80, 4/26/22.

5 Year Average 1917 to 1921 Incl.

$691,352,271 divided by 22 items equals $31,425,103. $834,310,731 divid
$627,639 divided by 22 items equals $28,529. $757,359 divid

Exhibit No. 7 to Plaintiff's Exhibit 1.

Chicago and North Western Railway Company.

Recapitulation of Values of Railway Property, State of Nebraska.

determined from	1916.	1917.	1918.	1919.	1920.	1921.	Average for 6 years.
.....	$31,773,632	$33,771,944	$35,265,820	$37,144,222	$37,291,962	$38,393,266	$35,606,808
.....	36,014,920	34,946,600	32,640,330	34,478,999	30,988,583	30,226,384	33,215,970
italized at 6%	40,896,852	36,264,265	19,291,140	20,662,841	000,000	10,481,083	21,266,030
Capitalized at	34,273,056	35,336,435	35,974,463	37,811,211	36,013,054	36,817,815	36,037,672
.....	.....	.....	.....	.....	38,347,464	39,204,390	*38,775,927
.....	$142,958,460	$140,319,244	$123,171,753	$130,097,273	$142,641,063	$155,122,938	$164,902,407
.....	$35,739,615	$35,079,811	$30,792,938	$32,524,318	$28,528,213	$31,024,538	$32,088,874
			Per Mile of Road.				
.....	$28,831	$30,645	$32,000	$33,705	$33,877	$34,878	$32,322
.....	32,680	31,711	29,618	31,286	28,151	27,459	30,152
italized at 6%	37,110	32,906	17,505	18,749	000,000	9,521	19,304
Capitalized at	31,099	32,064	32,643	34,310	32,715	33,446	32,713
.....	.....	.....	.....	.....	34,836	35,614	*35,225
.....	$129,720	$127,326	$111,766	$118,050	$129,579	$140,918	
.....	$32,430	$31,832	$27,942	$29,513	$25,916	$28,184	$29,129

80, 4/26/22.

5 Year Average 1917 to 1921 Incl.

$691,352,271 divided by 22 items equals $31,425,103.
$627,639 divided by 22 items equals $28,529.

6 Year Average.

$834,310,731 divided by 26 items equals $32,088,874.
$757,359 divided by 26 items equals $29,129.

average of the entire line. Taking the year 1916 as an illustration, the operating revenue per mile in the State of Nebraska is 58% of the average of the entire line; the transportation train miles is 68% of the average of the entire line; the traffic units 37% of the average of the entire line, indicating that the productive power of this property, measured per mile of road, is relatively small.

Therefore, this affiant avers and states the fact to be that
88 the value per mile of railway of the Chicago and North Western System in the State of Nebraska is not in Excess of the sum of Twenty-nine Thousand One Hundred and Twenty-nine Dollars ($29,129.00), and the aggregate value of all lines of the Chicago and Northwestern Railway Company in the State of Nebraska is not in excess of the sum of thirty-two million, eighty-eight thousand, eight hundred and seventy-four dollars, ($32,088,874.00).

And further affiant sayeth not."

(Here follow Plaintiff's Exhibits Nos. 1-7, marked side folio pages 89-96.)

97 Plaintiff offered in evidence an affidavit of C. F. Balch, marked Plaintiff's Exhibit 1-A, Mr. Balch being the same affiant as the one named in Plaintiff's Exhibit 1, said affidavit relating to the value of plaintiff's property for the year 1921, but in which affidavit additional facts were set forth relating to the physical features of plaintiff's property, not included in said Plaintiff's Exhibit 1. A portion of said affidavit, Exhibit 1-A is as follows:

Plaintiff's Exhibit 1-a.

"I further depose and say that the foregoing conclusion is entirely consistent with a review of the characteristics of the Chicago and North Western Railway Company's property in the State of Nebraska as compared with its property in other states.

In other states, such as Illinois, Wisconsin, Iowa, and Minnesota, the company has its largest and most expensive terminals and shops. To illustrate, the Company has in the State of Illinois very large and expensive terminals, especially in the City of Chicago. It also has very extensive shops and yards in West Chicago, Proviso and East Clinton. In the terminal and industrial switching district of the City of Chicago alone the Company has over 370 miles of track devoted to terminal and industrial switching, and has located upon said track "and serves 432 large industries, some of which are the largest in the world, such, for instance, as the plants of the International Harvester Company, the American Can Company, the Griffin Wheel Company, etc. The Chicago and Northwestern Railway Company has the largest terminals in the city of Chicago and the Chicago industrial zone of any trunk railway

system entering the City of Chicago, and does in said city and the switching zone thereof the largest switching service of any trunk line entering the city.

This Company has also property in the other states which it serves outside of Nebraska of unusual and extraordinary value, of which there is nothing comparable within the State of Nebraska. This company has, by way of illustration, not only the extensive freight terminals and shops in Illinois above referred to but also has a very extensive and expensive passenger terminal in the City of Chicago which passenger terminal when it was completed in 1909 had cost to produce at that time $24,795,838.38. Said passenger terminal is located upon a tract of land consisting of 40 acres, including the land occupied by the immediate terminal and tracks approaching said station. That said 40-acre tract "is located immediately west of the Chicago river, and within a distance of four blocks of the most valuable property in the city being the loop district.

In addition to said 40 acres of land above described this company has 80 acres adjoining said tract, some of which extends along the north branch of the Chicago river, and some of which property extends to State Street, which is the principal retail street of the City of Chicago, and, in addition, some of this Company's property in this city extends east of State street and to and including the approaches to the Municipal Pier of the City of Chicago on Lake Michigan.

In addition, the General office Building of the Company is located at the corner of Jackson Boulevard and Franklin Street, in the City of Chicago, and in the Loop district. Said office building, when acquired, cost not less than $2,003,367.56.

In addition, this company has located in the City of Chicago what is known as its Calumet Elevator, situated on Calumet Lake in the southern portion of the city, the same being one of the largest terminal grain elevators in the world, "constructed at a cost of $3,671,106.21.

This Company has for years been engaged in elevating its tracks in the City of Chicago and beyond the border lines of the city. That the cost of this elevation work or the amount actually expended therefor was the sum of $8,271,524.00.

This Company has and does in the City of Chicago the largest steam railroad suburban business of any railroad in said city. It has a system of elevated tracks extending north from its Madison Street Terminal through Evanston, along the north shore of Lake Michigan, said system of elevated tracks consisting of two and in some places three tracks. All of it is three tracks as far north as the suburb of Wilmette. That said elevated tracks are devoted largely to suburban business and pass through a portion of the most densely populated part of the city of Chicago.

That in the City of Chicago this Company has two expensive bridges of the most modern type over the Chicago river. That the cost of the bridges and right of way for the tracks, outside the pas-

senger terminal proper, in the City of Chicago is not included in the foregoing figures, but would be an addition thereto.

101 "This Company also has the largest shops of its system devoted to the maintenance and repair of its equipment located in West Chicago, and it has its largest terminal yards for the classification of freight at Proviso, adjacent to the city of Chicago. That within the City of Chicago this Company has one of the largest freight terminals in the entire country, known as the Wood Street freight house and yard, and in addition thereto it has one of the largest freight terminals in the middle west located almost adjacent to the loop district, known as Grand Avenue station. In addition thereto it has within the City of Chicago a very large and extensive freight house and terminal which abuts upon State Street, which, as before stated, is the most important retail street in the City of Chicago. For instance, there is located upon State Street in the City of Chicago such great institutions as the retail store of Marshall Field & Company, the Boston Store, Mandel Brothers, the Fair, etc. That said freight house property of the North Western Railway Company is on both sides of State Street, just north of the Chicago river and within four blocks of the retail store of Marshall Field &

102 Company. In addition, this "Company has in Illinois large and extensive freight yards in East Clinton on the east bank of the Mississippi river, and also in the State of Illinois this Company has large industrial districts in such cities as Rockford, Geneva, Elgin, Dekalb, Dixon and Sterling. That this Company is also one of the owners of the Belt Line of railway extending around the City of Chicago; also one of the owners of what is known as the St. Charles Air Line, which penetrates the very heart of the industrial district in Chicago.

While the foregoing does not completely describe all of the extraordinary characteristics of the North Western System in the State of Illinois as distinguished from its property in the State of Nebraska, yet it illustrates the vast and extensive investments in terminals, both freight and passenger, elevated tracks, grain elevators, shops and industrial property in the State of Illinois, of which there is no comparison or comparable property in the State of Nebraska.

In addition, this Company owns extensive terminals and facilities in the City of Milwaukee, Wisconsin. In that city it has a grain elevator, the cost of which was $717,260.92; and it was "ele-

103 vated tracks in that city, the cost of which was $1,671,849. And at New Butler, immediately west of the city of Milwaukee, this company has large and extensive car repair shops; and on Lake Michigan in the States of Wisconsin and Michigan this company has constructed and owns ore docks and facilities for the handling of iron ore, the cost of which docks and facilities has been in excess of $5,000,000. In addition to this the Chicago and Northwestern Railway Company owns two large and expensive bridges that span the Mississippi river, one at Winona, Minnesota, and the other at Clinton, Iowa, and its owns a large bridge which spans the Missouri River at Pierre in the State of South Dakota and one across

the Missouri River at Blair, Nebraska. In addition, it owns one of the longest double-track bridges of any railway system in the country, known as the high bridge at Boone in the State of Iowa, which bridge and its approaches cost not less than $500,000. That said bridges across the Mississippi River at Winona, and Clinton and across the Missouri River at Pierre, South Dakota and Blair, Nebraska, cost not less than $4,213,000.

In addition, this company owns at Council Bluffs "In the
104 State of Iowa a terminal grain elevator the cost of which was $1,204,253.57.

That all of the above described property in the states of Illinois, Wisconsin, Minnesota, Iowa, Michigan and South Dakota, is included in the system value of the Chicago and Northwestern Railway Company as said system value is set out in the formula hereto attached for the purpose of arriving at and showing the value of the North Western Railway System as a whole, and that a portion of said value is spread out over the mileage of the company in the State of Nebraska in the formulas used in this affidavit and attached hereto for the purpose of arriving at the value in the State of Nebraska.

That this Company has no large terminals in the State of Nebraska, either freight or passenger; that it has no large depots in said State, and, indeed, no shops except shops largely devoted to the running repairs or, in other words, temporary repairs of locomotives and cars. Indeed there are only three of such shops located in Nebraska —one at Chadron, one at Norfolk and one at Fremont, and some slight repair work is done in the roundhouse at South Omaha.

105 "That outside of the freight terminals of this Company in the city of Omaha, which are small compared to those hereinbefore described, there are no freight terminals or passenger terminals in the State of Nebraska except the ordinary depots in the country towns through which this line passes, with the exception of small classification yards at Fremont and Lincoln. And this Company owns no terminal grain elevators in the State of Nebraska.

Affiant further states that the foregoing does not cover a complete description of the unusual and extraordinary values of this Company's property in other States as compared to Nebraska, but does illustrate such extraordinary and unusual values in other states as compared to the State of Nebraska. That all of said extraordinary and unusual values above referred to in said other states are included in the system value of the North Western Railway Company as used by affiant in this affidavit and in the exhibits hereto attached.

By way of further illustration of the extraordinary and unusual value of this Company's property in said other states than Nebraska, affiant further states that this Company has a double track system
106 of railroad extending from Council Bluffs on "the Missouri River in the State of Iowa to the City of Chicago, a distance of 487 miles. In addition, it has a four-track system of railroad between the City of Chicago and the City of Milwaukee a distance of 85 miles; a double track system from the city of Chicago to Elroy in the State of Wisconsin, a distance of 200 miles. That all of said double-track system of railway, as well as a great deal of the single-track

railway of said company outside of the State of Nebraska, is equipped with automatic electric block signal devices. That said double-track system consists mostly of heavy rail, said rail being of the weight of 100 pounds to the yard. That most of said double-track system is constructed of rock ballast, and that in the state of Nebraska there is no double-track system and a very small amount of rock ballast, and the weight of the heaviest rail in the State of Nebraska does not exceed 90 pounds to the yard, of which there is a limited amount. That a great majority of the rail in the state of Nebraska is of a weight not to exceed 72 pounds to the yard, and on a great deal of the mileage in Nebraska the weight of the rail is 60 pounds per yard.

Affiant further states that the equipment or "rolling stock,
107 such as cars and locomotives, operated through the State of Nebraska is considerably less in value per mile of line than the average of the entire system; that the locomotives used in Nebraska are of lighter types and of earlier design than those in the States of Iowa, Wisconsin, Michigan and Illinois. That this is so because the traffic density in the State of Nebraska is considerably less than that in the States named, and, indeed, less than one-half the average per mile of road of the entire system. That because of the lighter rail, the lack of ballast, light track, and bridge construction generally in the state of Nebraska, the same forbids the use of the heavier types of locomotives, such as the types that are used in the territory of denser traffic in the states of Iowa, Wisconsin, Michigan and Illinois.

That the Northwestern system consisted in 1921 of a total of 8,402. That of this amount there was in the State of Nebraska 1,100 miles, whereas in the State of Iowa there was 1,632 miles, in Illinois 824 miles; in Wisconsin 2,160 miles, and in Michigan 511 miles. That is to say, in the states of the extraordinary and unusual values
108 as above "described, consisting of the States of Iowa, Illinois, Wisconsin and Michigan, there was in the year 1921, a total of 5,127 miles out of the total system mileage of 8,298 as against 1,100 miles of lighter and less valuable trackage in the State of Nebraska.

Affiant further states that he is one of the officers of the Chicago and North Western Railway Company having charge and supervision of the books and the accounting system of said Company; that he knows that said books and said accounting system are kept strictly and accurately and in accordance with the rules of accounting and classification prescribed by the Interstate Commerce Commission. That all of the figures, data and information as hereinbefore set forth in this affidavit have been compiled under the direct and immediate supervision of affiant. That he has for several years past made a special study and kept himself thoroughly advised as to the data and the records as shown by the official books of the said Railway Company kept and maintained under the supervision and in accordance with the rules prescribed by the Interstate Commerce Commission. That said books and the figures and data in
109 this affidavit contained are, as stated, "true and accurate, as shown by the books of said company. That he has made a

study of and is acquainted with the most generally accepted metho as used by governmental authorities and by students acquainted wit the subject, for the purpose of arriving at and distributing the sai system values of interstate railway companies to the various State through which the Northwestern Railway Company operates, an that the system value of the Chicago and North Western Railwa Company, properly and fairly and liberally allocated to the State o Nebraska in the method as hereinbefore defined and as set forth in the exhibits attached to this affidavit, does not exceed the sum o thirty million, four hundred fifty-one thousand, four hundred and ninety-five dollars ($30,451,495)."

(Here follow tables marked side folio pages 110-116.)

117 Plaintiff offered in evidence the affidavit of T. A. Polle marked Plaintiffs' Joint Exhibit 2, which is as follows:

Plaintiff's Joint Exhibit 2.

"1922 Tax Suit."

In the District Court of the United States for the District of Nebrask Omaha Division.

CHICAGO & NORTH WESTERN RAILWAY COMPANY, Plaintiff,

vs.

W. H. OSBORNE, JR., AS STATE TAX COMMISSIONER OF THE STA OF NEBRASKA, et al., Defendants.

Affidavit of T. A. Polleys Concerning the True Value of Nebrask Real Estate in the Year 1922 and the Relation of the 1922 A sessment Thereto.

STATE OF ILLINOIS,
County of Cook, ss:

(1) T. A. Polleys, being first duly sworn, on oath says that he now and ever since December 1, 1915, has been the Tax Commi sioner of the Chicago and North Western Railway Company, th plaintiff above named; that since July 1, 1903 continuously to th present time, he has also been the Tax Commissioner of the Chicag St. Paul, Minneapolis and Omaha Railway Company; that, in h capacity as Tax Commissioner as aforesaid, he has, for nearl
118 twenty years last past, made a thorough study of land valu in the State of Iowa, Nebraska, South Dakota and Wisconsi and, (during the past seven years) also in the States of Illinois an Wyoming; that his research in respect to land values in the seven states mentioned has been based, in large part, upon the so-calle

110 Exhibits Compiled

111 Ex

Chica

Value of entire line as represented by Exhibit No. —	1916.
2. Par Value of Stocks and Bonds	$358,484,000
3. Market " " " " "	406,336,070
4. Annual Rental Paid by Government Capitalized at 6%	.....
5. Amount Allowed in Ex Parte 74	.....
Total	$764,820,070
Average of Above	$382,410,035
Miles of Road Operated	8,107.82
2. Par Value of Stocks and Bonds	$44,215
3. Market " " " " "	50,116
4. Annual Rental Capitalized at 6%	.....
5. Amount allowed in Ex Parte 74	.....
Total	$94,331
Average of above	$47,166

Accounting Depar

*Three Year Average.
**One Year Average.

Exhibits Compiled by C. F. Balch, Nebraska Tax Case.—November, 1922.

Exhibit No. 1 to Plaintiff's Exhibit 1-A.

Chicago and North Western Railway Company.

Value of Road Operated.

Entire Line.

Exhibit No. —	1916.	1917.	1918.	1919.	1920.	Accumulated total.	Average for five years.
.....	$358,484,000	$369,563,500	$379,066,500	$379,862,500	$403,229,000	$1,890,205,500	$378,041,100
.....	406,336,070	382,417,649	350,845,542	352,606,093	335,072,088	1,827,277,442	365,455,488
ment Capitalized							
.....	.....	.....	386,683,593	386,683,593	389,400,476	1,162,767,662	*387,589,221
.....	.....	.....	.....	.....	414,641,884	414,641,884	**414,641,884
.....	$764,820,070	$751,981,149	$1,116,595,635	$1,119,152,186	$1,542,343,448	$5,294,892,488	.....
.....	$382,410,035	$375,990,575	$372,198,545	$373,050,729	$385,585,862	.....	$378,206,606

Value per Mile of Road Operated.

.....	8,107.82	8,094.95	8,090.45	8,090.45	8,402.58	.....	.....
.....	$44,215	$45,654	$46,854	$46,952	$47,900	$231,665	$46,345
.....	50,116	47,242	43,365	43,583	39,879	224,185	44,802
.....	.....	.....	47,795	47,795	46,344	141,934	*47,299
.....	.....	.....	.....	.....	49,349	49,349	**49,349
.....	$94,331	$92,896	$138,014	$138,330	$183,562	$647,133	.....
.....	$47,166	$46,448	$46,005	$46,110	$45,891	.....	$46,224

Accounting Department B File U-80, Oct. 23, 1922.

Five Year Average, 1916 to 1920, Incl.
$647,133 divided by 14 items equals..... $46,224
$5,294,892,488 divided by 14 items equals $378,206,606

Exhibit No. 2 to Plaintiff's Exhibit 1-A.

Chicago and North Western Railway Company.

Assignment of Property Value to State of Nebraska.

	1916.	1917.	1918.	1919.	1920.	Accum
1. Value of Entire Line as represented by Par Value of Stocks and Bonds.....	$358,484,000	$369,563,500	$379,066,500	$379,862,500	$403,229,000	$1,89
Apportioned to State of Nebraska on basis of:						
2. Railway Operating Revenues	$23,678,720	$30,636,814	$31,272,986	$33,465,886	$32,177,674	$15
3. Transportation Train Miles	33,267,315	34,406,362	37,906,650	41,139,109	41,371,295	18
4. Traffic Units	18,210,987	20,289,036	20,962,377	22,905,709	22,661,470	10
5. Use of Property	25,810,848	29,121,604	31,007,640	34,719,433	34,476,080	15
6. Total	$105,967,870	$114,453,816	$121,149,653	$132,230,137	$130,686,519	$60
7. Value State of Nebr. (Avg. of Four)....	$26,491,968	$28,613,454	$30,287,413	$33,057,534	$32,671,630	$15
8. Miles of Read Operated in Nebraska...	1,102.05	1,102.05	1,102.05	1,102.05	1,100.80	
9. Value per Mile of Road Operated.....	$24,039	$25,964	$27,483	$29,996	$29,680	
Ratios allotted to State of Nebr.:						
10. Railway Operating Revenues	8.00%	8.29%	8.25%	8.81%	7.98%	
11. Transportation Train Miles	9.28	9.31	10.00	10.83	10.26	
12. Traffic Units	5.08	5.49	5.53	6.03	5.62	
13. Use of Property	7.20	7.88	8.18	9.14	8.55	

Accounting Department B File U-80, Oct. 23, 1922.

Exhibit No. 2 to Plaintiff's Exhibit 1-A.

Chicago and North Western Railway Company.

Assignment of Property Value to State of Nebraska.

1916.	1917.	1918.	1919.	1920.	Accumulated total.	Average for five years.	Average per mile of road.	
358,484,000	$369,563,500	$379,066,500	$379,862,500	$403,229,000	$1,890,205,500	$378,041,100	$46,345	Entire Line
$23,678,720	$30,636,814	$31,272,986	$33,465,886	$32,177,674	$156,232,080	$31,246,416	$28,360	Nebr.
33,267,315	34,406,362	37,906,650	41,139,109	41,371,295	188,090,731	37,618,146	34,142	"
18,210,987	20,289,036	20,962,377	22,905,709	22,661,470	105,029,579	21,005,916	19,065	"
25,810,848	29,121,604	31,007,640	34,719,433	34,476,080	155,135,605	31,027,121	28,160	"
105,967,870	$114,453,816	$121,149,653	$132,230,137	$130,686,519	$604,487,995	$120,897,599	109,727	"
$26,491,968	$28,613,454	$30,287,413	$33,057,534	$32,671,630	$151,121,999	$30,224,400	$27,432	"
1,102.05	1,102.05	1,102.05	1,102.05	1,100.80	5,509.00	1,101.80	.....	
$24,039	$25,964	$27,483	$29,996	$29,680	.....	$27,432	.....	
8.00%	8.29%	8.25%	8.81%	7.98%				
9.28	9.31	10.00	10.83	10.26				
5.08	5.49	5.53	6.03	5.62				
7.20	7.88	8.18	9.14	8.55				

3, 1922.

Exhibit No. 3 to Plaintiff's Exhibit 1-A.

Chicago and North Western Railway Company.

Assignment of Property Value to State of Nebraska.

	1916.	1917.	1918.	1919.	1920.	Accum
1. Value of Entire Line as represented by Market Value of Stocks and Bonds....	$406,336,070	$382,417,649	$350,845,542	$352,606,093	$335,072,088	$1,8
Apportioned to State of Nebraska on basis of						
2. Railway Operating Revenues	$32,506,886	$31,702,423	$28,944,757	$31,064,597	$26,738,752	$1
3. Transportation Train Miles	37,707,987	35,603,083	35,084,554	38,187,240	34,378,396	1
4. Traffic Units	20,641,872	20,994,729	19,401,758	21,262,147	18,831,051	1
5. Use of Property	29,256,197	30,134,511	28,699,165	32,228,197	28,648,663	1
6. Total	$120,112,942	$118,434,746	$112,130,234	$122,742,181	$108,596,862	$5
7. Value State of Neb. (Average of Four).	$30,023,235	$29,608,686	$28,032,559	$30,685,545	$27,149,216	$1
8. Miles of Road Operated in Nebraska...	1,102.05	1,102.05	1,102.05	1,102.05	1,100.80	
9. Value per Mile of Road Operated.....	$27,248	$26,867	$25,437	$27,844	$24,663	

Accounting Department B File U-80, Oct. 23, 1922.

Exhibit No. 3 to Plaintiff's Exhibit 1-A.

Chicago and North Western Railway Company.

Assignment of Property Value to State of Nebraska.

1916.	1917.	1918.	1919.	1920.	Accumulated total.	Average for five years.	Average per mile of road.	
3,336,070	$382,417,649	$350,845,542	$352,606,093	$335,072,088	$1,827,277,442	$365,455,488	$44,802	Entire Line
2,506,886	$31,702,423	$28,944,757	$31,064,597	$26,738,752	$150,957,415	$30,191,483	$27,402	Nebr.
7,707,987	35,603,083	35,084,554	38,187,240	34,378,396	180,961,260	36,192,252	32,848	"
9,641,872	20,994,729	19,401,758	21,262,147	18,831,051	101,131,557	20,226,311	18,358	"
9,256,197	30,134,511	28,699,165	32,228,197	28,648,663	148,966,733	29,793,347	27,040	"
9,112,942	$118,434,746	$112,130,234	$122,742,181	$108,596,862	$582,016,965	$116,403,393	$105,648	
3,023,235	$29,608,686	$28,032,559	$30,685,545	$27,149,216	$145,504,241	$29,100,848	26,412	
1,102.05	1,102.05	1,102.05	1,102.05	1,100.80	5,509.00	1,101.80	.....	
$27,248	$26,867	$25,437	$27,844	$24,663	.....	$26,412	.....	

922.

Exhibit No. 4 to Plaintiff's Exhibit 1-A.

Chicago and North Western Railway Company.

Assignment of Property Value to State of Nebraska.

	1918.	1919.	1920.	Accumulated total.	Aver... three ...
1. Value of Entire Line as calculated by Annual Rental Paid by Government Capitalized at 6%.	$386,683,593	$386,683,593	$389,400,476	$1,162,767,662	$387,5...
Apportioned to State of Nebraska on basis of					
2. Railway Operating Revenues	$31,901,396	$34,066,825	$31,074,158	$97,042,379	$32,3...
3. Transportation Train Miles	38,668,359	41,877,833	39,952,489	120,498,681	40,1...
4. Traffic Units	21,383,603	23,317,021	21,884,307	66,584,931	22,1...
5. Use of Property	31,630,718	35,342,880	33,293,741	100,267,339	33,4...
6. Total	$123,584,076	$134,604,559	$126,204,695	$384,393,330	$128,1...
7. Value State of Nebraska (Average of Four)	$30,896,019	$33,651,140	$31,551,174	$96,098,333	$32,0...
8. Miles of Road Operated in Nebraska	1,102.05	1,102.05	1,100.80	3,304.90	1,1...
9. Value per Mile of Road Operated	$28,035	$30,535	$28,662	.....	$...

Accounting Department.
B File U-80, Oct. 24, 1922.

Exhibit No. 4 to Plaintiff's Exhibit 1-A.

Chicago and North Western Railway Company.

Assignment of Property Value to State of Nebraska.

	1918.	1919.	1920.	Accumulated total.	Average for three years.	Average per mile of road.	
d by Annual talized at 6%.	$386,683,593	$386,683,593	$389,400,476	$1,162,767,662	$387,589,221	$47,299	Entire Line.
on basis of							
.....	$31,901,396	$34,066,825	$31,074,158	$97,042,379	$32,347,460	$29,363	Nebraska.
.....	38,668,359	41,877,833	39,952,489	120,498,681	40,166,227	36,461	"
.....	21,383,603	23,317,021	21,884,307	66,584,931	22,194,977	20,147	"
.....	31,630,718	35,342,880	33,293,741	100,267,339	33,422,446	30,339	"
.....	$123,584,076	$134,604,559	$126,204,695	$384,393,330	$128,131,110	$116,310	"
Four).....	$30,896,019	$33,651,140	$31,551,174	$96,098,333	$32,032,778	$29,078	
.....	1,102.05	1,102.05	1,100.80	3,304.90	1,101.63		
.....	$28,035	$30,535	$28,662	.....	$29,078		

Exhibit No. 5 to Plaintiff's Exhibit 1-A.

Chicago and North Western Railway Company

Assignment of Property Value to State of Nebraska

	1920.	Average per mile of road.	
1. *Value of Entire line as allowed by Interstate Commerce Commission in Ex Parte 74	$414,641,884	$49,349	Entire Line
Apportioned to State of Nebraska on basis of			
2. Railway Operating Revenues	$33,088,422	$30,059	Nebraska
3. Transportation Train Miles	42,542,257	38,647	"
4. Traffic Units	23,302,874	21,169	"
5. Use of Property	35,451,881	32,205	"
6. Total	$134,385,434	$122,080	
7. Value State of Nebraska (Average of Four)	$33,596,358	$30,520	
8. Miles of Road Operated in Nebraska	1,100.80		
9. Value per Mile of Road Operated	$30,520		

Accounting Department B File U-80, Oct. 23, 1922.

*Value of all lines in Western District as claimed by Carriers was reduced 8.15% by the Interstate Commerce Commission, and the reduced value was taken as the basis upon which a reasonable return should be calculated.

Exhibit No. 6 to Plaintiff's Exhibit 1-A.

Chicago and North Western Railway Company.

Recapitulation of Values of Railway Property.

State of Nebraska.

Value of railway property in Nebraska as determined from Exhibit No. —	1916.	1917.	1918.	1919.	192
2. Par Value of Stocks and Bonds	$26,491,968	$28,613,454	$30,287,413	$33,057,534	$32,671
3. Market " " " " "	30,028,235	29,608,686	28,032,559	30,685,545	27,14
4. Annual Rental Paid by Government Capitalized at 6%	.....	.....	30,896,019	33,651,140	31,55
5. Amount allowed in Ex Parte 74	.....	.....	.....	.....	33,59
Total	$56,520,203	$58,222,140	$89,215,991	$97,394,219	$124,96
Average of Above	$28,260,102	$29,111,070	$29,738,664	$32,464,740	$31,24
		Per Mile of Road			
Miles of Road Operated in Nebraska	1,102.05	1,102.05	1,102.05	1,102.05	1,10
2. Par Value of Stocks and Bonds	$24,039	$25,964	$27,483	$29,996	$29
3. Market " " " " "	27,248	26,867	25,437	27,844	24
4. Annual Rental Paid by Government Capitalized at 6%	.....	.....	28,035	30,535	28
5. Amount allowed in Ex Parte 74	.....	.....	.....	.....	30
Total	$51,287	$52,831	$80,955	$88,375	$113
Average of Above	$25,644	$26,416	$26,985	$29,458	$28

Accounting Department B File U-80, Oct. 24, 1922.

$426,320,931 divided by 14 items equals $30,451,495
$386,973, divided by 14 items equals.....$27,641

*Three Year Average.
**One Year Average.

Exhibit No. 6 to Plaintiff's Exhibit 1-A.

Chicago and North Western Railway Company.

Recapitulation of Values of Railway Property.

State of Nebraska.

n Nebraska as determined from 6. —	1916.	1917.	1918.	1919.	1920.	Average for five years.
and Bonds	$26,491,968	$28,613,454	$30,287,413	$33,057,534	$32,671,630	$30,224,400
" "	30,028,235	29,608,686	28,032,559	30,685,545	27,149,216	29,100,848
Government Capitalized at 6%	.....	.....	30,896,019	33,651,140	31,551,174	*32,032,778
Parte 74	.....	.....	.....	.....	33,596,358	**33,596,358
.....	$56,520,203	$58,222,140	$89,215,991	$97,394,219	$124,968,378	.....
.....	$28,260,102	$29,111,070	$29,738,664	$32,464,740	$31,242,095	$30,451,495
			Per Mile of Road			
Nebraska	1,102.05	1,102.05	1,102.05	1,102.05	1,100.80	1,101.80
and Bonds	$24,039	$25,964	$27,483	$29,996	$29,680	$27,432
" "	27,248	26,867	25,437	27,844	24,663	26,412
Government Capitalized at 6%	.....	.....	28,035	30,535	28,662	*29,078
Parte 74	.....	.....	.....	.....	30,520	**30,520
.....	$51,287	$52,831	$80,955	$88,375	$113,525	.....
.....	$25,644	$26,416	$26,985	$29,458	$28,381	$27,641

$426,320,931 divided by 14 items equals $30,451,495

3 File U-80, Oct. 24, 1922. $386,973, divided by 14 items equals.....$27,641

assessment ratio method which has been for many years employed by the tax commissions of Wisconsin and Minnesota for the ascertainment of the approximate true value of real estate; that the said assessment ratio method has also been used by the State Board of Equalization of the State of Nebraska, at times, in the equalization of real estate assessments, particularly in connection with the real estate equalization made in and for the year 1920; that, in the prosecution of the real estate studies above mentioned within the State of Nebraska, affiant has personally gathered from the public records many thousand transfers of Nebraska real estate and has personally posted against each such transfer the assessed value of the real estate in question under the assessment last preceding the date of transfer; that he has examined and studied a still larger number of Nebraska real estate transfers and assessments gathered by other representatives of the tax departments of the two companies above mentioned, under the personal direction and supervision of affiant; that the Nebraska real estate transfers gathered and studied as above mentioned cover both rural and urban real estate; that by reason
119 of his said studies above referred to, affiant verily believes he is well advised as to the true value of Nebraska real estate, particularly within the Nebraska counties crossed by the lines of the plaintiff company and the Chicago, St. Paul, Minneapolis and Omaha Railway Company, in and for the year 1922 and continuously for a considerable number of years prior thereto.

(2) Affiant further states that, Section 5662 of the Compiled Statutes of Nebraska for 1922, provides as follows:

"That hereafter all deeds, mortgages and conveyances of real estate in this State shall duly and correctly state in the body of such instrument the actual consideration paid for such transfer; provided, however, that where the actual consideration does not exceed one hundred dollars, said sum or any less sum may be stated as the consideration in such instrument."

That in the State of Nebraska by reason of the foregoing statutory provision very few deeds of acre property going upon the public records fail to set forth the consideration for the transfer of the property; that there is very close correspondence and agreement between the stated consideration in recorded deeds of Nebraska acre property and the consideration indicated by the revenue stamps affixed to said deeds and the prior encumbrances recited therein.

(3) Affiant further states that Exhibits A, B and C attached hereto and made a part hereof are tables setting forth, county
120 by county, the results of a very recently completed study of the sales of acre property in the 37 Nebraska counties crossed by the lines of the plaintiff company and those of the C. St. P. M. & O. Ry. Co., during the period January 1921 to November 1922 inclusive, except that in Douglas County the period closes with October 31st 1922; that Exhibit A, (Table #969) covers 4,131 such acre transfers, executed (with the exception of a very few transfers), within the period January 1921 to November 1922 inclusive, covers 802,347 acres, sold at an average price of $85.00 per acre and as-

sessed in 1922 at $45.74 per acre or, at 53.82% of the average stated sale price just mentioned; that Exhibit B (Table #970) covers 2,575 transfers of acre property executed (with the exception of a very few transfers) within the period January 1921 to December 1921 inclusive, and covers 493,792 acres, sold at the average price of $92.05 per acre and assessed in 1922 at $46.51 per acre, or at 50.53% of the average stated sale price just mentioned; that Exhibit C (Table #971) covers 1,556 transfers of acre property all executed within the period January to November 1922 inclusive and covers 208,555 acres sold at an average price of $73.71 per acre and assessed in 1922 at $44.50 per acre or at 60.37% of the average stated sale price just mentioned; that the 1922 average assessed value per acre for the entire group of 37 Nebraska counties covered by said three tables is $49.23 per acre; that the average estimated
121 true value per acre of the entire group of 37 counties, as worked out by the complete application of the so-called assessment ratio process, is $91.40 per acre as shown by Exhibit A, table #969, for the period January 1921 to November 1922 inclusive; that the estimated true value per acre of the entire group of 37 counties in and for the calendar year 1921 arrived at by the application of the complete assessment ratio process, as shown by Exhibit B, table #970, was $97.46; and that the average estimated true value per acre of said entire group of 37 counties, as arrived at by the application of the complete assessment ratio process, as shown by Exhibit C, table #971, for the period January to November 1922 inclusive, has dropped to $81.55.

(4) Affiant further states that Exhibit D (being Table #750 hereto attached and made a part hereto correctly sets forth the average value per acre of all farm land, including buildings, fixed by the 1920 United States Census for the respective counties of Nebraska, and also shows in column 3 the average assessed value per acre of each Nebraska county in 1921, and in column 4 sets forth the ratio of the said 1921 assessed value to the 1920 true value as fixed by the United States Census; that the 1922 average assessed value per acre for the respective counties of the State of Nebraska are shown in pen figures at the right and left hand margins of said Exhibit D (Table #750); that the 1921 average assessed
122 value per acre for the 37 C. & N. W. and C. St. P. M. & O. counties, as shown at the foot of column 3 of said Exhibit D, was $49.95 as against an average of $49.23 under the 1922 real estate assessment as shown at the foot of column 9 in Exhibits A, B and C; that the average assessed value per acre, including buildings, for the entire State of Nebraska for the year 1921 as shown by said Exhibit D, was $39.19, and that the average assessed value per acre, including buildings, for the entire State for the year 1922 will not exceed approximately $39.00; that the average 1922 assessed value per acre of all farm lands in the State of Nebraska, including buildings, being approximately $39.00 per acre, does not exceed approximately 45% of the average value per acre fixed by the 1920 United States Census for all farm lands in the State, including buildings, namely, $87.81.

(5) Affiant further states that the Nebraska Crop Reporter issued under date of March 1st, 1922, by the United States Department of Agriculture, Bureau of Market and Crop Estimates, in cooperation with State of Nebraska, Department of Agriculture, Bureau of Markets and Marketing, contains upon the second page thereof, a paragraph reading as follows:

"Farm land with improvements averaged $85 per acre as compared to the 1920 Census valuation $87.91 per acre. Land alone has an average value of $76 per acre compared to the Census value of $78.87. These values may seem low, but consideration must be given to the fact that these are average values for the State.
123 More than 25% of the State lies within the sandhill section which the Census values at approximately $20 per acre. The average value of poor plow land is $75 per acre; good plow land, $125 per acre; all plow land $105 per acre."

(6) Affiant further states that Exhibits E and F (being Tables #805 and #806) set forth, county by county, the results of a special investigation made under the supervision of affiant concerning first mortgage farm loans made within the 37 Nebraska counties crossed by the lines of the C. & N. W. and the C. St. P. M. & O., during the period September 1920 to March 1922 inclusive, and the relation borne by the 1921 assessment to the amount of the first mortgage loan with reference to each mortgaged parcel included in said tables; that the general captions and the column captions in said exhibits E and F (Tables #805 and #806) sufficiently describe the methods employed in arriving at the results set forth in said exhibits as to the respective counties therein mentioned; that exhibit E (table #805) deals with all of the selected mortgages in the 37 counties (3604) whereas exhibit F (table # 806) is based upon 603 first farm mortgages made or assigned to insurance companies; that, as shown at the foot of column 11, in each of said exhibits E and F, the average amount of first mortgage loan per acre for the entire number of counties treated as a single group, exceeded 75% of the 1921 assessed value of the particular lands thus mentioned.

(7) Affiant further states that the total of the grand
124 assessment roll of the State of Nebraska, as equalized by the State Board of Equalization for the year 1922, after the deduction therefrom of the railroad assessment, is approximately $2,875,000,000 of which approximately 60% is represented by the assessment of acre property and approximately 15 to 17% is represented by the assessment of town lots.

(8) Affiant further states that, as indicated by a further study of over 9,000 very recent transfers of urban real estate in the 37 Nebraska counties crossed by the lines of the C. & N. W. and the C. St. P. M. & O. Railway Companies, the 1921 assessed value of the said urban real estate thus transferred represented only 56.34% of the sale price of the said real estate; that the ratio of the 1921 assessment to the estimated 1922 true value of urban real estate just stated (56.34%) does not differ substantially from the

ratio of the 1921 assessment of acre property, including buildings, to the 1922 estimated true value of all acre property in said 37 counties, treated as a unit, namely 52.98%.

(9) Affiant further states that the land sales referred to and summarized in Exhibits A, B and C (Tables #969, 970 and 971) are widely distributed throughout the respective counties, and, generally speaking, fairly represent all general localities and all qualities of soil and variations in value within the said several counties;
125 that, on the whole, the average intrinsic quality of the lands covered by the sales summarized in said Exhibits A, B and C, is somewhat below the average intrinsic quality of the entire body of lands in said group of 37 counties considered as a unit, as is shown by a comparison of the figures at the foot of columns 7 and 9 in said Exhibits A, B and C; that, under the comparison just suggested it appears from Exhibit B, that the nearly 500,000 acres of land sold during the calendar year 1921, were assessed at only $46.51 per acre in 1922, whereas, the entire body of assessable lands in said 37 counties considered as a group was assessed at an average of $49.23 per acre; in the calendar year 1922, as shown by Exhibit C, the somewhat over 300,000 acres sold, were assessed at only $44.50 per acre in 1922, whereas the entire body of lands in the 37 counties, considered as a group, were assessed at $49.22 per acre.

Further affiant saith not.

(Signed) T. A. Polleys.

Subscribed and sworn to before me this twenty-eight- day of November, A. D. 1922.

(Signed) Margaret C. Carmody, Notary Public."

(End of Plaintiff's Joint Exhibit 2.)
(But see exhibits attached next page.)

(Here follow Exhibits "A," "B," and "C," marked side folio pages 126, 127, and 128.)

Exhibit "A" to Plaintiff's Joint Exhibit 2.

Recapitulation of Land Sales from January 1, 1921, to November, 1922, and the 1922 Equalized Assessment Against Same in 37 Nebraska Counties Crossed by the C. & N. W. and C., St. P., M. & O. Railways.

County.	Transfers.	Acres, sold.	Consideration.		1922 equalized assessment.		Ratio.	1922 av'g equal. ass'm't per acre, entire county.	Est'd true value per acre, entire county.
			Total.	Per acre.	Total.	Per acre.			
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
Adams	76	11,060	$1,181,590	$106.83	$748,840	$67.70	63.37%	$71.83	$113.35
Antelope	167	27,963	2,389,613	85.43	1,285,506	45.97	53.81%	48.78	90.65
Boone	117	21,128	2,830,496	133.97	1,456,855	68.95	51.46%	71.10	138.17
Boyd	126	24,696	1,561,879	63.24	944,508	38.25	60.48%	43.32	71.63
Brown	136	56,513	909,859	16.10	422,630	7.47	46.45%	8.40	18.08
Burt	88	14,269	2,673,027	187.33	1,459,894	102.31	54.62%	117.47	215.07
Butler	83	10,361	1,771,360	170.96	875,838	84.53	49.45%	96.69	195.53
Cedar	120	18,398	2,682,565	145.81	1,646,652	89.50	61.38%	94.18	153.44
Cherry	202	101,800	1,091,081	10.71	469,819	4.61	43.04%	4.93	11.46
Clay	103	14,023	1,774,015	126.51	1,010,975	72.09	56.98%	77.74	136.44
Colfax	59	6,725	1,344,596	199.94	771,245	114.68	57.35%	112.77	196.64
Cuming	92	10,744	1,937,519	180.33	1,260,705	117.34	65.07%	120.33	184.92
Dakota	36	4,843	719,082	148.48	407,370	84.12	56.65%	96.51	170.37
Dawes	46	17,046	457,100	26.82	193,410	11.35	41.95%	10.31	24.58
Dixon	88	13,871	1,859,380	134.05	981,850	70.78	52.80%	80.27	152.03
Dodge	70	6,968	1,618,120	232.22	797,310	114.42	49.27%	118.73	240.98
Douglas	69	4,752	1,291,002	271.68	686,337	144.43	53.16%	144.64	272.08
Fillmore	114	15,727	1,985,782	126.27	1,270,280	80.77	63.97%	85.31	133.36
Hamilton	101	10,477	1,537,375	146.74	842,576	80.42	54.81%	86.73	158.24
Holt	288	86,105	3,391,151	39.38	1,401,585	16.28	41.34%	15.32	37.06
Knox	168	24,657	2,245,795	91.08	1,235,148	49.22	54.04%	50.65	93.73
Lancaster	173	20,808	3,476,322	167.07	2,070,675	99.51	59.56%	101.22	169.95
Madison	112	15,934	2,536,245	159.17	1,264,408	79.35	49.85%	86.23	172.98
Nuckolls	99	14,393	1,574,934	109.42	802,055	55.73	50.93%	59.52	116.87
Pierce	97	13,923	1,763,723	126.68	863,270	62.00	48.94%	70.75	144.56
Platte	108	13,378	2,160,310	161.48	1,208,757	90.35	55.95%	98.45	175.96
Rock	74	39,623	645,558	16.29	248,235	6.26	38.43%	8.22	21.39
Saunders	118	14,646	2,723,594	185.96	1,427,342	97.46	52.41%	104.07	198.57
Seward	113	14,040	2,170,783	154.61	1,133,753	80.75	52.23%	94.30	180.55
Sheridan	104	37,049	870,803	23.50	337,069	9.10	38.72%	7.15	18.47
Sioux	83	31,810	679,353	21.36	319,542	10.05	47.05%	6.42	13.65
Stanton	103	17,500	2,570,572	146.89	1,492,365	85.28	58.06%	92.84	159.90
Thayer	159	22,436	2,470,830	110.13	1,227,425	54.71	49.66%	62.57	126.00
Thurston	157	11,479	1,488,516	129.67	906,900	79.01	60.93%	91.52	150.21
Washington	63	6,084	1,099,684	180.75	611,576	100.52	55.61%	123.83	222.68
Wayne	68	10,266	2,000,331	194.85	1,063,996	103.64	53.19%	105.85	199.01
York	151	16,852	2,714,749	161.09	1,549,972	91.97	57.09%	92.17	161.45
37 Counties	4,131	802,347	68,198,694	85.00	36,696,673	45.74	53.82%	49.23	91.48

Compiled by Tax Department of C. & N. W. Ry. Co., Chicago, Ill. November 20, 1922. #969.

Exhibit "B" to Plaintiff's Joint Exhibit 2.

Recapitulation of Land Sales from January to December, 1921, Inclusive, and the 1922 Equalized Assessment Against Same in 37 Nebraska Counties Crossed by the C. & N. W. and C., St. P., M. & O. Railways.

County.	Transfers.	Acres, solid.	Consideration.		1922 equalized assessment.		Ratio.	1922 av'g equal. ass'mt per acre, entire county.	Est'd true value per acre, entire county.
			Total.	Per acre.	Total.	Per acre.			
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
Adams	48	6,622	$727,165	$109.81	$426,711	$64.44	58.69%	$71.83	$122.39
Antelope	113	19,592	1,684,965	86.24	898,366	45.85	53.17%	48.78	91.74
Boone	76	12,957	1,894,867	146.24	875,955	67.60	46.26%	71.10	153.70
Boyd	76	14,820	1,004,594	67.79	574,905	38.79	57.22%	43.32	75.71
Brown	81	30,055	503,649	16.76	236,730	7.88	47.00%	8.40	17.87
Burt	59	9,958	1,900,326	190.83	966,604	97.07	50.87%	117.47	230.93
Butler	62	7,366	1,387,736	188.40	653,793	88.76	47.12%	96.69	205.20
Cedar	61	11,594	1,810,339	156.14	1,029,870	88.83	56.88%	94.18	165.58
Cherry	134	70,557	800,989	11.35	312,612	4.43	39.04%	4.93	12.63
Clay	68	9,533	1,238,233	129.89	679,995	71.33	54.92%	77.74	141.55
Colfax	37	4,055	962,796	237.43	495,480	122.19	51.46%	112.77	219.15
Cuming	52	5,559	1,101,623	198.17	662,150	119.11	60.10%	120.33	200.22
Dakota	23	3,273	533,135	162.89	273,275	83.49	51.26%	96.51	188.28
Dawes	26	8,447	210,610	24.93	78,190	9.26	37.15%	10.31	27.76
Dixon	46	7,150	980,578	137.14	495,100	69.24	50.49%	80.27	158.98
Dodge	52	5,429	1,323,270	243.74	620,180	114.23	46.87%	118.73	253.32
Douglas	40	3,164	883,474	279.23	444,090	140.36	50.27%	144.64	287.73
Fillmore	67	9,498	1,298,196	136.68	769,440	81.01	59.27%	85.31	143.94
Hamilton	51	5,107	810,680	158.74	415,410	81.34	51.24%	86.73	169.27
Holt	189	47,845	2,144,387	44.82	767,170	16.03	35.76%	15.32	42.84
Knox	94	14,198	1,323,156	93.19	690,542	48.64	52.19%	50.65	97.05
Lancaster	116	14,470	2,507,147	173.26	1,473,200	101.81	58.76%	101.22	172.26
Madison	72	10,709	1,860,777	173.76	871,631	81.39	46.84%	86.23	184.10
Nuckolls	59	8,691	959,510	110.40	467,780	53.82	48.75%	59.52	122.10
Pierce	53	7,507	1,094,268	145.77	471,215	62.77	43.06%	70.75	164.31
Platte	52	6,691	1,128,712	168.69	574,125	85.81	50.87%	98.45	193.54
Rock	42	16,543	355,698	21.50	121,810	7.36	34.23%	8.22	24.01
Saunders	67	9,015	1,772,268	196.59	865,740	96.03	48.85%	104.07	213.04
Seward	68	9,210	1,541,800	167.40	766,088	83.18	49.69%	94.30	189.78
Sheridan	66	24,674	575,569	23.33	224,129	9.08	38.93%	7.15	18.37
Sioux	53	23,313	504,184	21.63	239,659	10.28	47.53%	6.42	13.51
Stanton	63	10,779	1,708,212	158.48	968,085	89.81	56.31%	92.84	164.87
Thayer	116	15,733	1,845,520	117.30	886,625	56.35	48.04%	62.57	130.25
Thurston	100	7,817	1,043,587	133.50	587,800	75.20	56.32%	91.52	162.50
Washington	50	4,719	868,435	184.03	468,264	99.23	53.92%	123.83	229.66
Wayne	38	5,195	1,135,824	218.64	509,522	98.08	44.86%	105.85	235.96
York	105	11,947	2,029,097	169.84	1,103,712	92.38	54.39%	92.17	169.46
37 Counties	2,575	493,792	45,455,376	92.05	22,965,953	46.51	50.53%	49.23	97.46

Compiled by Tax Department of C. & N. W. Ry. Co., Chicago, Illinois, November 20, 1922. #970.

Exhibit "C" to Plaintiff's Joint Exhibit 2.

Recapitulation of Land Sales From January to November, 1922, and the 1922 Equalized Assessment Against Same in 37 Nebraska Counties, Crossed by the C. & N. W. and C. St. P. M. & O. Railways.

County.	Transfers.	Acres, sold.	Consideration.		1922 equalized assessment.		Ratio.	1922 av'g equal. ass'm't per acre, entire county.	Est'd true value per acre, entire county.
			Total.	Per acre.	Total.	Per acre.			
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
Adams	28	4,438	$454,425	$102.39	$322,129	$72.58	70.89%	$71.83	$101.33
Antelope	54	8,371	704,648	84.18	387,140	46.25	54.94%	48.78	88.79
Boone	41	8,171	935,629	114.51	580,900	71.09	62.08%	71.10	114.53
Boyd	50	9,876	557,285	56.43	369,603	37.42	66.31%	43.32	65.33
Brown	55	26,458	406,210	15.35	185,900	7.03	45.76%	8.40	18.36
Burt	29	4,311	772,701	179.24	493,290	114.43	63.85%	117.47	183.98
Butler	21	2,995	383,624	128.09	222,045	74.14	57.88%	96.69	167.05
Cedar	59	6,804	872,226	128.19	616,782	90.65	70.72%	94.18	133.18
Cherry	68	31,243	290,092	9.29	157,207	5.03	54.15%	4.93	9.11
Clay	35	4,490	535,782	119.33	330,980	73.72	61.78%	77.74	125.83
Colfax	22	2,670	381,800	143.00	275,765	103.28	72.23%	112.77	156.13
Cuming	40	5,185	835,896	161.21	598,555	115.44	71.61%	120.33	168.04
Dakota	13	1,570	185,947	118.44	134,095	85.41	72.12%	96.51	133.82
Dawes	20	8,599	246,490	28.67	115,220	13.40	46.74%	10.31	22.06
Dixon	42	6,721	878,302	130.75	486,750	72.42	55.39%	80.27	144.92
Dodge	18	1,539	294,850	191.59	177,130	115.09	60.08%	118.73	197.62
Douglas	29	1,588	407,528	256.63	242,247	152.55	59.44%	144.64	243.34
Fillmore	47	6,229	687,586	110.39	500,840	80.40	72.83%	85.31	117.14
Hamilton	50	5,370	726,695	135.32	427,166	79.55	58.79%	86.73	147.53
Holt	99	38,260	1,246,764	32.59	634,415	16.58	50.87%	15.32	30.12
Knox	74	10,459	922,639	88.21	544,606	52.07	59.03%	50.65	85.80
Lancaster	57	6,338	969,175	152.92	597,475	94.27	61.65%	101.22	164.18
Madison	40	5,225	675,468	129.28	392,777	75.17	58.15%	86.23	148.30
Nuckolls	40	5,702	615,424	107.93	334,275	58.62	54.32%	59.52	109.58
Pierce	44	6,416	669,455	104.34	392,055	61.11	58.57%	70.75	120.80
Platte	56	6,687	1,031,598	154.27	634,632	94.90	61.52%	98.45	160.03
Rock	32	23,080	289,860	12.56	126,425	5.48	43.63%	8.22	18.84
Saunders	51	5,631	951,326	168.94	561,602	99.73	59.03%	104.07	176.31
Seward	45	4,830	628,983	130.22	367,665	76.12	58.46%	94.30	161.31
Sheridan	38	12,375	295,234	23.86	112,940	9.13	38.27%	7.15	18.64
Sioux	30	8,497	175,169	20.62	79,883	9.40	45.60%	6.42	14.08
Stanton	40	6,721	862,360	128.31	524,280	78.01	60.80%	92.84	152.70
Thayer	43	6,703	625,310	93.29	340,800	50.84	54.50%	62.57	114.81
Thurston	57	3,662	444,929	121.50	319,100	87.14	71.72%	91.52	127.61
Washington	13	1,365	231,250	169.41	143,312	104.99	61.97%	123.83	199.83
Wayne	30	5,071	864,507	170.48	554,474	109.34	64.14%	105.85	165.03
York	46	4,905	685,652	139.79	446,260	90.98	65.08%	92.17	141.63
37 Counties	1,556	308,555	22,743,319	73.71	13,730,720	44.50	60.37%	49.23	81.55

Compiled by Tax Department of C. & N. W. Ry. Co., Chicago, Illinois, November 20, 1922. #971.

129 **Exhibit "D" to Plaintiff's Joint Exhibit 2.**

Nebraska.

Table Showing 1920 U. S. Census Average Value per Acre of All Farm Land (Including Buildings) for All Nebraska Counties Except Five, and Also Showing Ratio of 1921 Average Assessed Value per Acre to Such County Value.

County.	1920 U. S. Census, av'g value per acre of all farm land (including buildings).	1921 average assessment per acre, entire county.	1921 assessment, ratio.	1922 average assessment per acre, entire county.
1.	2.	3.	4.	
	$	$		$
Adams	114.59	72.12	62.94%	71.83
Antelope	117.01	50.09	42.81%	48.78
Arthur	15.35	4.35	28.34%	4.73
Banner	22.22	7.30	32.85%	7.06
Blaine	.....	4.66	.....	4.65
Boone	159.86	70.60	44.16%	71.10
Box Butte	32.07	8.78	27.38%	9.03
Boyd	87.47	43.22	49.42%	43.32
Brown	25.61	8.92	34.83%	8.40
Buffalo	101.23	46.11	45.55%	46.14
Burt	245.50	120.30	49.00%	117.47
Butler	218.31	97.13	44.49%	96.69
Cass	228.52	111.32	48.71%	111.46
Cedar	185.14	97.00	52.39%	94.18
Chase	.....	12.20	.....	12.27
Cherry	15.18	5.29	34.85%	4.93
Cheyenne	64.52	22.30	34.57%	22.86
Clay	140.82	77.69	55.17%	77.74
Colfax	226.53	111.82	49.36%	112.77
Cuming	228.62	123.60	54.06%	120.33
Custer	57.94	20.49	35.37%	20.45
Dakota	179.63	96.86	53.92%	96.51
Dawes	28.82	10.45	36.26%	10.31
Dawson	90.10	41.14	45.66%	40.94
Deuel	67.60	26.16	38.70%	25.06
Dixon	195.30	82.10	42.04%	80.27
Dodge	254.80	119.36	46.84%	118.73
Douglas	280.43	144.05	51.37%	144.64
Dundy	32.06	10.47	32.66%	10.47
Fillmore	160.71	85.26	53.05%	85.31

County.	1920 U. S. Census, av'g value per acre of all farm land (including buildings).	1921 average assessment per acre, entire county.	1921 assessment, ratio.	1922 average assessment per acre, entire county.
1.	2.	3.	4.	
	$	$		$
Franklin	76.14	38.84	51.01%	38.89
Frontier	43.10	17.04	39.54%	16.69
Furnas	61.38	29.72	48.42%	29.63
Gage	156.25	79.91	51.14%	80.19
Garden	21.80	9.81	45.00%	9.22
Garfield	30.20	13.23	43.81%	12.10
Gosper	64.21	28.63	44.59%	28.86
Grant	16.72	3.60	21.54%	3.82
Greeley	99.11	42.29	42.67%	37.51
Hall	134.09	61.55	45.90%	61.38
Hamilton	186.21	86.68	46.55%	86.73
Harlan	73.35	32.00	43.64%	32.06
Hayes	.....	12.87	.....	12.55
Hitchcock	40.30	18.22	45.21%	18.48
Holt	43.50	16.24	37.33%	15.32
Hooker	.....	3.99	.....	3.70
Howard	111.75	45.71	40.91%	45.58
Jefferson	129.68	69.67	53.73%	70.11
Johnson	162.12	81.67	50.38%	85.46
Kearney	106.25	50.93	47.94%	50.47
Keith	36.35	13.48	37.10%	12.53
Keya Paha	26.23	10.38	39.58%	9.58
Kimball	42.42	17.88	42.15%	17.37
Knox	112.60	53.26	47.30%	50.65
Lancaster	178.99	100.40	56.09%	101.22
Lincoln	37.34	10.09	27.02%	10.07
Logan	35.48	8.45	23.82%	8.24
Loup	23.16	7.73	33.38%	6.62
McPherson ...	11.47	5.22	45.52%	3.52
Madison	176.88	86.72	49.03%	86.23
Merrick	143.25	61.70	43.07%	62.19
Morill	32.37	9.90	30.60%	10.10
Nance	160.08	64.63	40.37%	65.15
Nemaha	194.38	95.38	43.92%	94.88
Nuckolls	113.07	58.62	51.85%	59.52

Table Sumarizing First Mortgage Farm Loans Made During Period September, 1920, to March 1922, Inclusive, in 37 Nebraska Counties Crossed by Lines of the C. & N. W. and C., St. P., M. & O.

Each first mortgage loan below included represents over 60.00% of the 1921 assessed value of the particular lands mortgaged. The mortgages are widely distributed throughout each county. A large proportion of the mortgages listed run to banks, trust companies and insurance companies. Purchase money mortgages are excluded. No mortgage at over $100. per acre is included, except to banks, trust companies and insurance companies. According to the consensus of opinion of 95 Nebraska bankers, the maximum proportion of current market value which the owner of farm land in Nebraska can procure by way of first mortgage thereon averages approximately 41.00%. (Concensus of opinion of 182 Iowa bankers as to the same proposition is approximately 42.00%

County.	No. of mortgages.	Number of acres.	Av'g amount of first mortgage loan per acre.	Est'd true value per acre of land thus mortgaged (col. #4 divided by 41% ratio). See above.	1921 assessed value per acre.			Est'd true value of entire county based on mortgage data only (col. #8 divided into col. #5).	Est'd true value per acre of entire county as of April 1, 1922, as per col. #5 of table #804.	Ratio of av'g amount loaned per acre (column #4) to 1921 assm't of lands mortgaged (col. #7).
					Entire county.	Lands mortgaged.	Ratio of column #7 to column #6.			
1.	2.	3.	4.	5.	6	7.	8.	9.	10.	11.
Adams	97	14,495	$48.19	$117.54	$72.12	$60.54	83.95%	$140.02	$122.25	79.60%
Antelope	111	19,190	40.76	99.42	50.09	47.88	95.60%	104.00	93.50	85.13%
Boone	131	22,889	55.89	136.31	70.60	71.73	101.60%	134.16	150.75	77.91%
Boyd	95	21,533	32.16	78.44	43.22	40.03	92.62%	84.69	69.50	80.34%
Brown	51	22,158	6.97	17.00	8.92	7.45	83.53%	20.36	19.00	93.56%
Burt	44	7,1[illegible]5	65.86	160.64	120.30	86.01	71.50%	224.67	211.00	76.57%
Butler	98	12,570	71.42	174.20	97.13	86.52	89.08%	195.56	207.75	82.55%
Cedar	75	13,660	66.13	161.30	97.00	92.11	94.96%	1[illegible]9.87	160.25	71.80%
Cherry	295	241,700	5.65	13.78	5.29	5.26	99.40%	13.87	12.00	107.42%
Clay	115	14,394	59.75	145.73	77.69	74.11	95.40%	152.76	132.00	80.63%
Colfax	41	4,750	82.10	200.25	111.82	116.70	104.36%	191.90	219.50	70.35%
Cuming	38	4,309	72.66	177.22	123.60	91.09	73.70%	240.46	219.00	79.77%
Dakota	36	5,456	63.84	155.71	96.86	85.69	88.47%	176.00	167.75	74.50%
Dawes	90	50,538	10.73	26.17	10.45	9.71	92.92%	28.16	28.75	110.50%
Dixon	106	14,822	60.91	148.56	82.10	79.43	96.75%	153.55	158.25	76.68%
Dodge	75	7,052	77.92	190.05	119.36	107.14	89.76%	211.73	213.50	72.73%
Douglas	27	2,097	79.20	193.17	144.05	104.31	72.41%	266.78	260.00	75.93%
Fillmore	97	12,527	64.00	156.10	85.26	82.22	96.44%	161.86	136.25	77.84%
Hamilton	106	11,126	66.79	162.90	86.68	84.05	96.97%	168.00	152.50	79.47%
Holt	158	44,079	18.65	45.49	16.24	18.37	113.11%	40.22	38.50	101.52%
Knox	188	32,193	47.26	115.27	53.26	59.60	111.90%	103.01	96.75	79.30%
Lancaster	112	13,415	71.04	173.27	100.40	89.45	89.09%	194.49	175.00	79.42%
Madison	126	19,523	58.53	142.76	86.72	69.77	80.40%	177.57	177.25	83.89%
Nuckolls	89	12,735	51.14	124.73	58.62	58.28	99.42%	125.46	113.00	87.75%
Pierce	67	12,7[illegible]6	57.21	139.54	76.78	77.44	100.86%	138.35	144.50	73.88%
Platte	117	15,104	66.94	163.27	99.20	96.06	96.84%	168.60	190.25	69.69%
Rock	51	18,999	7.65	18.66	9.05	7.51	82.99%	22.48	25.00	101.83%
Saunders	90	8,044	70.90	172.93	104.26	99.49	95.42%	181.24	209.75	70.96%
Seward	91	10,745	68.41	166.86	94.17	84.81	90.06%	185.28	178.00	80.66%
Sheridan	145	71,595	9.00	21.96	7.34	7.24	98.64%	22.26	22.75	124.31%
Sioux	91	49,481	7.26	17.71	6.91	7.39	106.95%	16.56	14.50	99.59%
Stanton	29	4,802	65.16	158.92	98.16	95.55	96.94%	163.94	170.25	68.19%
Thayer	158	23,614	48.69	118.76	62.00	55.88	90.13%	131.77	123.25	87.17%
Thurston	140	10,432	61.84	150.83	92.77	82.81	89.27%	168.96	151.50	74.68%
Washington	25	2,594	71.01	173.20	125.86	93.30	74.13%	233.65	217.00	76.11%
Wayne	61	10,732	69.01	168.32	105.82	96.98	91.65%	183.66	207.25	71.16%
York	138	15,290	69.50	169.51	92.71	89.65	96.70%	175.30	164.50	77.52%
37 Counties	3,604	878,574	29.84	72.78	49.95	36.76	(Arith. Av'g). 92.54%	96.54	94.25	81.18%

Compliments of T. A. Polleys, Tax Comm'r., C. & N. W. Ry. Co., Chicago, Ill. April 28, 1922.

Copies of this table may be had on application. #805.

County.	1920 U. S. Census, av'g value per acre of all farm land (including buildings).	1921 average assessment per acre, entire county.	1921 assessment, ratio.	1922 average assessment per acre, entire county.
1.	2.	3.	4.	
	$	$		$
Otoe	200.16	105.58	52.75%	104.09
Pawnee	139.91	69.21	49.47%	69.23
Perkins	55.27	16.25	29.41%	16.14
Phelps	95.43	49.42	51.79%	49.45
Pierce	176.90	76.78	43.41%	70.75
Platte	194.78	99.20	50.93%	98.45
Polk	215.41	96.99	45.03%	97.44
Red Willow ...	50.30	21.29	42.33%	21.37
Richardson ...	196.95	92.11	46.77%	91.95
Rock	30.07	9.05	30.10%	8.22
Saline	173.42	93.41	53.86%	93.57
Sarpy	239.55	102.71	42.88%	104.44
Saunders	228.23	104.26	45.68%	104.07
Scott's Buff ...	111.66	37.69	33.75%	.....
Seward	198.58	94.17	47.42%	94.30
Sheridan	25.35	7.34	28.96%	7.15
Sherman	86.15	35.58	41.31%	35.13
Sioux	17.80	6.91	38.83%	6.42
Stanton	174.87	98.16	56.13%	92.84
Thayer	126.60	62.00	48.98%	62.57
Thomas	13.21	4.72	35.74%	3.27
Thurston	206.87	92.77	44.84%	91.52
Valley	99.04	39.51	39.90%	38.94
Washington ...	227.77	125.86	55.26%	123.83
Wayne	246.65	105.82	42.90%	105.85
Webster	86.60	44.85	51.80%	44.65
Wheeler	.....	13.20	.....	12.10
York	200.90	92.71	46.15%	92.17
State	87.91	39.19	44.58%	
37 C. & N. W. and C. St. P. M. & O. Co.'s	107.66	49.95	46.40%	

Compiled by Tax Department of C. & N. W. Ry. Co.; Chicago, Ill. Nov. 30, 1921. #750.

(Here follow Exhibits "E" and "F," marked side folio pages 130 and 131.)

132 Plaintiff offered in evidence the affidavit of T. A. Polleys, marked Plaintiff's Joint Exhibit 3, said affidavit being as follows:

Plaintiff's Joint Exhibit 3.

"STATE OF ILLINOIS,
County of Cook, ss:

T. A. Polleys, being first duly sworn, on oath says that he is the Tax Commissioner of the Chicago and North Western Railway Company and also of the Chicago, St. Paul, Minneapolis and Omaha Railway Company, and that he has held both said positions for more than seven years last past; that as such Tax Commissioner he has gathered or caused to be gathered from the public records, within the 37 Nebraska Counties crossed by the lines of the two plaintiff railways above mentioned, memoranda covering substantially all warranty deeds of acre property shown of record within said counties and executed between January 1, 1921, and the early part of November, 1922, said memoranda taken from the deed records covering as to each conveyance, the date of the instrument, the names of the parties thereto, the volume and page where recorded, the description of the property conveyed, the acreage conveyed, and the consideration recited or indicated in said deed; that he has
133 also posted or caused to be posted from the assessment rolls of each said Nebraska county against the consideration for each parcel of acre property thus transferred, the 1922 assessed value for said parcel, as equalized by the State Board of Equalization of Nebraska; that the work of gathering the said memoranda as to transfers and assessments from the public records of the said 37 Nebraska Counties, was done in part by affiant in person and in part by other regularly employed members of the tax departments of the said plaintiff companies above named; the said other persons all acting under the instructions and under the personal supervision of affiant in the performance of said work; that affiant has also caused the said original memoranda made by himself and the other members of the tax departments of the two plaintiff companies to be correctly transcribed in typewritten form and that the typewritten sheets hereinafter following, in the canvas-bound volume of which this affidavit is a part, constitute and contain a complete, accurate and carefully compared transcript of the said original memoranda of transfers and assessments gathered from the public records of the said 37 Nebraska counties as above described for the
134 period named; that said transfers and assessments thus transcribed in the said canvas-bound volume are correctly summarized in the three tables numbered respectively 969, 970, and 971 and lettered respectively A, B and C, as exhibits to the affidavit made by this affiant in the above entitled suit of the plaintiff Chicago and North Western Railway Company, under date of November 28th, 1922, that the 37 Nebraska Counties represented in the said transcript of land sales and assessments are as follows, to-wit: Adams, Antelope, Boone, Boyd, Brown, Burt, Butler, Cedar, Cherry,

Clay, Colfax, Cuming, Dakota, Dawes, Dixon, Dodge, Douglas, Fillmore, Hamilton, Holt, Knox, Lancaster, Madison, Nuckolls, Pierce, Platte, Rock, Saunders, Seward, Sheridan, Sioux, Stanton, Thayer, Thurston, Washington, Wayne, and York; that as shown by table #969 the total number of acre transfers in said 37 counties during the period January 1921 to November 1922 inclusive, was 4,131 the total acreage covered thereby being 802,347, and the average ratio of 1922 assessment to consideration being 53.82%; that, as shown by table #970 the total number of acre transfers in said 37 counties during the period January 1921 to December 1921
135 inclusive was 2,575; the number of acres comprised therein being 493,792 and the assessment ratio developed therefrom being 50.52%; that, as shown by table #971, the total number of acre transfers in said 37 counties, during the period January 1922 to November 1922 inclusive, was 1,556, the total acreage comprised therein being 308,555 and the 1922 assessment ratio disclosed therefrom being 60.37%; that, for the convenience of the court and of counsel, a copy of each of said tables #969, 970, and 971 is attached immediately following this affidavit."

Attached to this affidavit were copies of Exhibits A, Exhibit B, and Exhibit C which are part of plaintiffs' Joint Exhibit 2 above referred to. There was also attached to Mr. Polleys' affidavit (Plaintiffs' Joint Exhibit 3) a large volume of data containing the details of all of the sales transrers mentioned in said affidavit and in the affidavit, Plaintiffs' Joint Exhibit Number 2. These details show as to each transfer of land the date of the transfer, the parties thereto, the legal description of the property, the book and page where the conveyance was recorded, the number of acres involved, the consideration recited, and the assessed valuation of each such description.

136 In the petition of the Chicago and North Western Railway Company in Equity 339, the following allegations were made:

"Plaintiff further states to the Court that this is a suit in equity to enjoin the collection of illegal taxes against the plaintiff; that said taxes are illegal because the said property of plaintiff has been valued for taxing purposes at more than its true value while the property of all other tax payers in the state, and particularly real estate, has systematically and intentionally and continuously been valued at only a fraction of its true value thereby resulting in a discrimination against the plaintiff and depriving the plaintiff of equal protection of the law in violation of the constitution of the State of Nebraska and the laws of the state, and in violation of the Fourteenth Amendment to the Constitution of the United States."

Said petition further alleges:

"Plaintiff further alleges that the State board of equalization and the several county assessors of the State of Nebraska have for more than two years assessed and valued farm land in the State of Ne-

braska at much less than the true value thereof; that during the year 1920 farm lands in the state of Nebraska, which constitute more than ninety per cent of the value of all property in the State except railroads, was fixed for taxing purposes by the State board of equalization and by the county assessors at only 68 per cent of the true value of such farm lands; and plaintiff alleges that for the year 1921 the valuation of farm lands in the state of Nebraska as returned by the county assessors of several counties and as adjusted and equalized by the State Board of Equalization, was fixed at only about 47 per cent of the true value of said farm lands; and in that behalf plaintiff alleges that the fixing of the valuation of farm lands for taxing purposes at only 47 per cent of the true value thereof by the State Board of Equalization was the result of a systematic, intentional, notorious and continuous undervaluation
137 of said farm lands for taxing purposes; that such intentional and systematic undervaluation of said farm lands for taxing purposes was done for the purpose of relieving the said farm lands of their just share of the taxing burden in the state."

In the answer of the defendants in said equity Number 339 the following admissions were made in Paragraph IX:

"Defendants admit that for many years farm lands in the State of Nebraska has been valued for taxation at less than its true value. In the year 1920 farm lands were valued at about 68 per cent of the true value thereof. Defendants deny specifically that for the year 1921 farm lands were assessed at 47 per cent of its true value; deny that real estate generally was assessed at 47 per cent of its true value; and allege that for the year 1921 farm land was assessed at approximately 75 per cent of its true value and that real estate generally was assessed fully as high."

In Paragraph XI of said answer the defendants therein further state:

"Defendants admit that while the laws of the State of Nebraska require that all property shall be assessed at its full value they allege that during the entire history of the State it has been the practice of the taxing authorities to value properties of all descriptions, including all railroads, at less than their full value; that in fixing the values of all descriptions of property for taxation it has been the practice of taxing authorities of this state to place them somewhat lower than their fair market value; that railroads have been undervalued in fully as large proportion to their full value as have other forms of property in proportion to their full valuation."

138 In the petition in equity 340 the plaintiff, Chicago, St. Paul, Minneapolis and Omaha Railway Company made allegations identical with those hereinbefore quoted from the petition in Equity in Number 339.

In the answer of defendants in Equity Number 340 the following admissions and allegations were made:

"The defendants admit that for many years farm land in the State of Nebraska has been valued for taxation at less than its true value. In the year 1920 farm lands were valued at about 68 per cent of the true value thereof. Defendants deny specifically that for the year 1921 the farm land was assessed at 47 per cent of its true value; deny that real estate generally was assessed at 47 per cent of its true value and allege that for the year 1921 farm land was assessed at approximately 75 per cent of its true value and that real estate generally was assessed fully as high."

Said answer further alleges:

"That all property, both that of the plaintiff and that of all other tax payers was assessed at less than its true value and that for the years 1920 and 1921 the property of the plaintiff was not valued to exceed 94 per cent of its true value and that while farm lands were assessed at a slightly lower proportion as compared with plaintiffs' property yet in comparison with all other property the property of plaintiff was fairly and honestly valued."

Said answer further admits:

"Defendants admit that while the law of the state of Nebraska requires that all property shall be assessed at its full value,
139 they allege that during the entire history of the State it has been the practice of taxing authorities to value property of all descriptions, including all railroads at less than their full values; that in fixing the valuation of all descriptions of property for taxation it has been the practice of the taxing authorities of this state to place them somewhat lower than their fair market value."

The plaintiff, Chicago, St. Paul, Minneapolis & Omaha Railway Company offered in evidence the affidavit of Charles Jensch, marked M. & O. Plaintiffs' Exhibit 1, which affidavit is as follows:

140 **M. & O. Plaintiff's Exhibti 1.**

"In the District Court of the United States in and for the District of Nebraska, Omaha Division.

CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY, Complainant,

vs.

W. H. OSBORNE, JR., as State Tax Commissioner of the State of Nebraska, et al., Defendants.

Affidavit of Charles Jensch, Comptroller of the Chicago, St. Paul, Minneapolis, and Omaha Railway Company, Showing System Value and Nebraska Value of Property of Complainant for the Years 1917 to 1921, Inclusive.

STATE OF MINNESOTA,
County of Ramsey, ss:

I, Charles Jensch, being first duly sworn, on my oath depose and state:

That I am Comptroller of the Chicago, St. Paul, Minneapolis and Omaha Railway Company and have held that position since
141 May 24, 1916, except during the period of Federal Control when I was Federal Auditor of said Railroad. That for a period of six years, or from May 1, 1910 to May 24, 1916, I was General Auditor of said Railway Company and for twenty years prior thereto I was connected with its Accounting Department.

II.

That I have general charge of the books and accounts of the Chicago, St. Paul, Minneapolis and Omaha Railway Company and of the compilation of statistics taken therefrom.

III.

That by virtue of the authority vested in me as Comptroller of the Chicago, St. Paul, Minneapolis and Omaha Railway Company, I have examined the records of said Railway System and compiled full, true and correct figures showing the value of said railway property, both as to the entire system and as to the State of Nebraska, for the period commencing January 1, 1917 and ending December 31, 1921; and I have been duly authorized to set forth said figures for the purpose of showing the value of this Railway Company's property for the entire system and for the State of Nebraska, covering the period aforesaid.

IV.

That Exhibits 1 to 7, inclusive, attached to this affidavit
142 incorporated herein and made a part hereof, have been made by me and under my supervision for the purpose of showing the value of the property of the Chicago, St. Paul, Minneapolis and Omaha Railway System for 1917 and 1921, inclusive, and especially the value of said system which should be properly allocated to the State of Nebraska for the purposes of taxation.

V.

That Exhibit No. 1, hereto attached, is a statement showing the value of the entire line of the Chicago, St. Paul, Minneapolis and Omaha Railway for the period mentioned and as represented by—

1st. The Par Value of Stocks and Bonds;

2nd. The Market Value of Stocks and Bonds;

3rd. The Net Railway Operating Income Capitalized at 6% per annum;

4th. The annual rental paid by the United States Government capitalized at 6%, which is the rental that was paid by the United States Government annually to the Chicago, St. Paul, Minneapolis and Omaha Railway during the period of Federal Control—from January 1, 1918 to February 29, 1920—and which was agreed upon by the Government and the Chicago, St. Paul, Minneapolis and Omaha Railway as a fair and just compensation for the use of the property.

143 5th. For the year 1920 only, the amount which was allowed as the valuation of the Chicago, St. Paul, Minneapolis and Omaha Railway by the Interstate Commerce Commission in Ex Parte 74 and upon which they determined a reasonable return should be received by the Chicago, St. Paul, Minneapolis and Omaha Railway Company.

These various values are set forth for each year for the entire line in total and also per mile of road operated.

In the last column to the right of said exhibit are set forth figures which show the average value per mile of road of the entire system for a period of five years, determined by each of the five foregoing methods. By combining all of the results of these different methods we find the average to be $37,387 per mile of road.

VI.

Exhibit No. 2 is a statement showing, on the upper line, for each year from 1917 to 1921, inclusive, and an average for the five years, the valuation as shown in Exhibit No. 1 as represented in the par value of stocks and bonds of the Chicago, St. Paul, Minneapolis and Omaha Railway Company outstanding in the hands of the public on December 31st, of the years aforesaid. Taking the year 1917 for an

example, this value has been apportioned to the State of Nebraska on four different bases, to-wit:

144 1st. On line 2, Railway Operating Revenues. This allocates to the State of Nebraska 11.55 per cent of the value of the entire line, upon the theory that railway operating revenues in the State of Nebraska for the year 1917 were 11.55 per cent of the railway operating revenues of the entire system. The railway operating revenues allocated to the State of Nebraska were those revenues arising from all traffic, whether passenger or freight, originating and terminating in the State of Nebraska, plus a mileage proportion of all other traffic which either originated in the State of Nebraska and terminated in some other State, or originated in some other State and terminated in the State of Nebraska, or which originated and terminated in some other State but passed through the State of Nebraska—this method of assignment being that required of the Company by the State of Minnesota for its use in determining the taxes of said State according to the statutes of that State governing this subject.

This method of assigning operating revenue is the method generally approved by most authorities familiar with the subject, and is the method used and applied by the Chicago, St. Paul, Minneapolis and Omaha Railway Company in the states through which it operates; is not only the method required by the statutes of the State of Minnesota, but is also the method accepted by all the states

145 in which the Omaha Company operates, such as the States of Minnesota, Wisconsin and Iowa for the purpose of assigning operating revenues to such states, and is a fair and reasonable and just method of apportioning operating revenues to the State of Nebraska.

The revenues so assigned in the year 1917 were 11.55 per cent of the total operating revenues of the Chicago, St. Paul, Minneapolis and Omaha Railway Company. By applying this percentage of 11.55 to the valuation of $71,205,946 we determine the value in the State of Nebraska to be $8,224,287 for the year 1917. On the same line of this exhibit to the right of the year 1917, is shown separately for each of the years 1918, 1919, 1920 and 1921, as determined by the same process for each year, the value of the property of this Company allocated to the State of Nebraska, and in the next column to the right is shown the Accumulated Total, then the Average Value for Five Years, and the Average per Mile of Road for the five-year period.

2nd. On line 3 is shown the value in the State of Nebraska as determined by taking that proportion of the transportation train miles which were performed in the State of Nebraska compared with the transportation train miles performed on the entire system. During the year 1917 it was found that 13.94 per cent of the total transportation train miles was performed in the State of Nebraska

146 and this percentage applied to the total valuation of $71,205,946 shows the value in the State of Nebraska to be $9,926,109. To the right of this on line 3 is shown the values for the years 1918, 1919, 1920 and 1921, determined in the same

ner, and to the right of this the accumulated total, the average for ive years, and the average per mile of road in the State of Nebraska.

3rd. On line 4 is shown the value in the State of Nebraska as etermined by the traffic units performed in the State of Nebraska as compared with the traffic units performed on the entire system. The traffic units are the tons one mile of revenue freight carried and the passengers one mile of the passengers carried. The total tons one mile of the entire line and the passengers one mile of the entire line were combined, and the total tons one mile and the passengers one mile in the State of Nebraska were combined, and the percentage relation of that combined total in the State of Nebraska to the combined total of the entire system was found to be 7.13 per cent of the year 1917, and this percentage applied to the total valuation of $71,-
16,946 determined the value in the State of Nebraska on this basis to be $5,076,984. To the right of this amount on line 4 are shown the values for each of the years 1918, 1919, 1920 and 1921,
47 determined in the same manner, and to the right of this the accumulated total, the average for the five years, and the verage per mile of road in the State of Nebraska.

4th. On line 5 is shown the value in the State of Nebraska, assigned on the basis of the use of property in the State of Nebraska. This basis is described as follows:

The value of the entire system for the year 1917 was first determined on the same basis as the value claimed in Ex Parte 74 to be the value on which the Interstate Commerce Commission should use their action in determining the 6 per cent return to be used as their basis in prescribing reasonable rates.

The valuation of the entire system was first analyzed and classified into five groups as follows:

Valuation of locomotives.
" " passenger cars.
" " freight cars.
" " work cars.
" " all other property.

The valuation of locomotives was then assigned to the State of Nebraska on the basis of the proportion of the locomotive miles in the State of Nebraska as compared with the locomotive miles of the entire system. The valuation of passenger cars was assigned to the State of Nebraska on the basis of the proportion of passenger car miles performed in the State of Nebraska compared with the passenger car miles of the entire system. The valuation of
38 freight cars was assigned to the State of Nebraska in the proportion which the freight car mileage in the State of Nebraska bears to the freight car mileage of the entire line. The valuation of work equipment was assigned in the State of Nebraska on the basis of the proportion that combined passenger and freight car miles in the State of Nebraska bear to the combined passenger and freight car miles of the entire system.

Aggregating these values which represent the use of all classes of equipment, and finding that proportion which the aggregate value

in the State of Nebraska bears to the aggregate value of the entire line to be 10.60 per cent for the year 1917, and applying this percentage to the total valuation of $71,205,946, determined the value in the State of Nebraska on this basis to be $7,547,830. To the right of this amount on line 5 are shown the values for each of the years 1918, 1919, 1920 and 1921, determined in the same manner and to the right of this the accumulated total, the average for the five years, and the average per mile of road in the State of Nebraska.

5th. On line 6 is shown, for each year, the combined total of the values as determined by the four different methods above enumerated. By dividing this total by 4, we find the average valuation. In the year 1917 this valuation is $7,693,803, and the value as determined by a five-year average is $7,520,94

149 Dividing each of these values by the miles of road operated in the State of Nebraska, which in 1917 is 308.39 we find the value per mile of road operated to be $24,948; for the year 1918, we find it to be $23,060; for the year 1919, $19,971; for the year 1920, $25,17 and for the year 1921, $28,786, or an average for the five years, determined by the four different methods of allocation aforesaid, $24,388 per mile of road.

VII.

On Exhibit No. 3, line one is shown the value of the entire Chicago, St. Paul, Minneapolis and Omaha Railway for each of the years enumerated, as represented by the market value of all its stock and bonds in the hands of the public. This value has been determined by taking the high and low quotations for each month from the market quotations of these stocks and bonds, and applying the average for each year to the total amount of each separate security outstanding. Following this method, the total value of the entire system as represented by the market value of its stocks and bonds in the hands of the public is found to be:

For the year	1917	$74,904,3
" " "	1918	67,067,1
" " "	1919	65,091,4
" " "	1920	64,121,7
" " "	1921	62,614,1

150 the average for the five years being $66,759,821, or $38,1 per mile of road.

These values have been allocated, each year separately to the State of Nebraska on the following bases:

1st. Railway Operating Revenues.
2nd. Transportation Train Miles.
3rd. Traffic Units.
4th. Use of Property.

In the use of each of these four different bases, the method followed in each instance is that described in computing Exhibit No.

The four different amounts so determined combined, and an average of the same found by dividing by 4, gives the valuation in the State of Nebraska as follows:

	Total value (line 7).	Value per mile of road (line 9).
For the year 1917	$8,093,436	$26,244
" " " 1918	6,701,687	21,731
" " " 1919	5,632,034	18,263
" " " 1920	6,699,124	21,723
" " " 1921	7,429,174	24,090
Average for the five years	6,911,091	22,410

The market value of these stocks and bonds should be given serious consideration because it represents the value placed upon this property by the purchasing public, and if it had been possible to have acquired all of the stocks and bonds at the market quotations of these dates the ownership of the entire property could have been acquired at this price.

VIII.

On Exhibit No. 4, Line one, will be found the valuation of 151 the entire system as calculated by capitalizing the net railway operating income of the entire system at six per cent for each year mentioned. The net railway operating income as used in this exhibit is determined by taking the railway operating revenues, deducting therefrom the railway operating expenses, railway tax accruals, uncollectible railway revenue and the net charge or credit, from the charges to hire of equipment and joint facility rentals, leaving as the net railway operating income that amount which the corporation receives and which is applicable to its corporate needs, dividends, interest, etc. This amount capitalized at six per cent produces the following values for the entire system:

For the year 1917	$70,320,537
" " " 1918	43,745,335
" " " 1919	44,620,752
" " " 1920	27,358,273
" " " 1921	34,422,489

The average for the five years was $44,093,477, or an average per mile of road of 25,208. These values have been allocated, each year separately to the State of Nebraska on four different bases as follows:

1st. Railway Operating Revenues.
2nd. Transportation Train Miles.
3rd. Traffic Units.
4th. Use of Property.

In the use of each of these four different bases, the method followed in each instance is that described in computing Exhibit No. 2.

152 The four amounts so determined were added and divided by 4, thus producing a valuation in the State of Nebraska as follows:

	Total value (line 7).	Value per mile of road (line 9).
For the year 1917	$7,598,134	$24,638
" " " 1918	4,371,252	14,174
" " " 1919	3,860,811	12,519
" " " 1920	2,858,256	9,268
" " " 1921	4,084,228	13,244
Average for the five years	4,554,536	14,769

IX.

On Exhibit No. 5, line one, will be found the values as shown on line 5 of Exhibit No. 1. The value of the entire line is calculated by capitalizing at six per cent the annual rental paid by the Government to the Chicago, St. Paul, Minneapolis and Omaha Railway for the use of its property during the period from January 1, 1918 to February 29, 1920. This rental payment was based upon the operating results of the three years ending June 30, 1917, which included the year 1916 which was the most prosperous year in the history of the line. The net operating income obtained through the operation of the system during the year 1916 was greater than that ever obtained by this system in any other one year, and the governmental rental was based upon this factor of net operating income, upon this basis we find the valuation of the Chicago, St. Paul, Minneapolis and Omaha Railway to be as follows:

153

For the year 1918	$82,193,71
" " " 1919	82,193,71
" " " 1920	82,193,71

The average for the three years was $82,193,711, or an average per mile of road of $46,990. These values have been allocated, each year separately, to the State of Nebraska on four different bases, as follows:

1st. Railway Operating Revenues.
2nd. Transportation Train Miles.
3rd. Traffic Units.
4th. Use of Property.

In the use of each of these six different bases, the method followed in each instance is that described in computing Exhibit No. 2.

Adding together the four amounts so determined and dividing by 4 we find the value in the State of Nebraska to be as follows:

	Total value (line 7).	Value per mile of road (line 9).
For the year 1918	$8,213,207	$26,633
" " " 1919	7,111,811	23,061
" " " 1920	8,587,188	27,845
Average for the three years	7,970,735	25,846

X.

On Exhibit No. 6, line one, is shown the value of the entire system as claimed in Ex Parte 74 to be the value upon which the Interstate Commerce Commission should base their action in determining the six per cent return to be used as their basis in prescribing reasonable rates. This amount is $86,020,834. The Interstate Com-
154 merce Commission, in determining the values upon which they would base their calculations, stated a valuation, as claimed by the carriers in the Western Group, of $8,818,454,872, but allowed the carriers in the Western Group a valuation of $8,100,000,000 as that value upon which they were entitled to a reasonable return. The percentage reduction arrived at by using these two amounts is 8.15 per cent. Applying this percentage of reduction so determined by the Interstate Commerce Commission in Ex Parte 74 to the amount claimed by the Chicago, St. Paul, Minneapolis and Omaha Railway of $86,020,834, we find a valuation of $79,010,136, which, according to the decision of the Interstate Commerce Commission is the amount determined by them as the valuation upon which the Chicago, St. Paul, Minneapolis and Omaha Railway is entitled to a fair return. This valuation, for the year 1920 only, has been apportioned to the State of Nebraska on the following bases:

1st. Railway Operating Revenues.
2nd. Transportation Train Miles.
3rd. Traffic Units.
4th. Use of Property.

In the use of each of these four different bases, the method followed in each instance is that described in computing Exhibit No. 2. The amounts arrived at by these four different bases are shown in Exhibit No. 6. In combining the four different bases ap-
155 plied to the valuation allowed by the Commission, the average valuation in the State of Nebraska is found to be $8,254,584, or $26,767 per mile of road.

XI.

Exhibit No. 7 is a recapitulation of these different values arrived at by the different methods of allocation applied to the different valuations as determined in the foregoing exhibits, showing for each

of the different processes the aggregate total valuation in the State of Nebraska and the valuation per mile of road.

Dividing the accumulated total by 19, we find that the average valuation arrived at by a composite of all of these different processes for the State of Nebraska is a total of $6,689,455, or $21,691 per mile of road.

By comparing this value per mile of road of $21,691 with the relative figure for the entire line of $37,387 (see Exhibit 1) it will be noted that the property of this Company in the State of Nebraska has a value per mile of road of 58.02 per cent of the average value per mile of road of the entire line.

Therefore, this affiant avers and states the fact to be that the value of the Chicago, St. Paul, Minneapolis and Omaha Railway System in the State of Nebraska is not in excess of the sum of Six Million Six Hundred Eighty-Nine Thousand, Four Hundred and Fifty-Five Dollars ($6,689,455) in the aggregate, or Twenty-One Thou-
156 sand, Six Hundred and Ninety-One Dollars ($21,691) per mile of road.

This allegation is entirely consistent with the physical investment of the Chicago, St. Paul, Minneapolis and Omaha Railway Company in the State of Nebraska, as compared with its investment in other states in which it operates.

In compliance with the Federal Valuation Act, the Interstate Commerce Commission has made a survey showing the estimated cost of reproduction new of the fixed property of this Company in the various states and on the entire line, together with the cost at present prices of land owned by this Company. While the Chicago, St. Paul, Minneapolis and Omaha Railway Company does not approve of the unit costs used by the said Commission in arriving at such cost of reproduction new, the units of property used in compiling such survey were mutually agreed upon and represent the actual property in existence.

The following table, compiled from such survey, shows the relation between the cost of reproduction new per mile of road in the State of Nebraska as compared with the entire line for the principal classes of fixed property.

Cost of Reproduction New, per mile of road, as shown by Preliminary Land and Engineering Reports of the Interstate Commerce Commission:

157 Account.	Nebraska.	Entire line.	Ratio, Nebraska to entire line.
Land for Transportation Purposes	$5,436.72	$7,925.50	68.60%
Grading	5,131.26	9,651.02	53.17%
Bridges, Trestles & Culverts	3,114.03	5,159.64	60.35%
Ties	3,204.03	3,287.53	97.46%
Rails	3,407.22	4,783.37	71.23%
Other Track Material	1,001.81	1,546.69	64.77%
Ballast	2,041.99	2,582.82	79.06%
Track Laying and Surfacing	2,046.04	2,929.36	69.85%
Station & Office Buildings	1,233.59	2,140.53	57.63%
Water Stations	234.62	401.47	58.44%
Shops and Engine houses	221.53	1,511.34	14.66%
Wharves and Docks	.....	395.17	.00%
Coal and Ore Docks	.....	95.10	.00%
Signals and Interlockers	9.34	307.33	3.04%
Shop Machinery	5.16	593.11	.87%
Total of above items	$27,087.34	$43,309.98	62.54%

It will be seen from this table that the cost of reproduction new per mile of road for the principal classes of fixed property in the State of Nebraska is 62.54% of the cost per mile of road for the same classes of property on the entire line. A brief review of the physical characteristics of the property of the Chicago, St. Paul, Minneapolis and Omaha Railway Company in the State of Nebraska, as compared with the property in the other states, will show why this is true.

In the States of Wisconsin and Minnesota are located 190.19 miles of second, third and fourth tracks as compared with 1.71 of second track in the State of Nebraska.

The entire Car and Mechanical, Construction and Repair Departments of this Company are located outside the State of
158 Nebraska.

At the Head of the Lakes and Itasca, Wisconsin, is located a grain elevator, representing an investment of $275,000, with no corresponding investment in the State of Nebraska.

The principal freight terminals of the Company are located at Minneapolis, St. Paul and Duluth, Minnesota, Itasca and Superior, Wisconsin and Sioux City, Iowa, with large investments in land and terminal facilities, whereas in Nebraska there is but one similar terminal at Omaha.

At the Head of the Lakes at Superior, this Company has made large investments in wharves and docks with no similar investments in Nebraska.

In the States of Wisconsin and Minnesota this Company has 202 miles of electric automatic block signals, with no corresponding investment in Nebraska.

What has been said with reference to fixed property will apply equally to equipment. The lighter traffic in Nebraska, as compared with the entire line, requires the employment of much less equipment per mile of road than on other portions of the line, while the lighter trains require smaller locomotives. Thirty-four per cent of all the freight traffic originating on the line of this Company in Nebraska consists of livestock and their products, while on the entire line only 8% of the business consists of such traffic.

This class of traffic moves more rapidly than dead freight
159 and therefore requires the use of less units of equipment.
(Signed) Charles Jensch.

Subscribed and sworn to before me this twenty-fourth day of November, 1922. (Signed) P. J. McCough, Notary Public, Ramsey County, Minn. (Seal.) My commission expires July 31st, 1926.

(End of Plaintiff's Exhibit 1.)
(But see exhibits attached, next page.)

(Here follow exhibits, marked side folio pages 160, 161, 162, 163, 164, 165, and 166.)

167 **Notations as to Exhibits.**

The following Exhibits offered by the Chicago, Burlington & Quincy Railroad Company were used by the Plaintiff herein in its own behalf:

C. B. &. Q. Exhibit 1, being the affidavit of A. W. Scribner, Tax Agent of the Union Pacific Railroad Company, showing an examination under his supervision of records of 1783 mortgages on tracts of land of forty acres of more filed between March 31, 1920 and April 1, 1922, in 66 counties in Nebraska, showing a total mortgage consideration of $13,282,664.00 covering 369,541 acres, such information being secured from 44 responsible loan and trust companies doing business in Nebraska, showing the appraisement of such loan and trust companies of $40,523,743.00 placed on the property so mortgaged, and showing also a valuation placed on said lands by the owners when applying for loans of $49,644,610.00; showing also that the tax assessments levied against said lands in 1921 were $22,287,278.00, and in 1922, $21,664,378.00; which shows a ratio of assessed value of lands to the owners' valuation of 44.9 per cent in 1921, and 43.7 per cent in 1922, and the ratio of assessed value of said lands to the loan companies' valuation shows 55 per cent in 1921 and 53.5 per cent in 1922.

168 C. B. & Q. Exhibit 2, being another affidavit by Mr. Scribner, covering the same, subject, showing an investigation of the records of farm land sales in 53 counties in Nebraska between March 1, 1921 and April 1, 1922, with a total of 2,752 transfers covering 667,415 acres, the appraised value of which lands was $35,801,350.00 and the tax assessment thereon in 1922 was $16,616.72.

Chicag

		1917.	
	Miles of Road Operated	.....	1,7
Ex. No.	Value of entire line as represented by—	Value.	Pe of
2.	Par Value of Stock and Bonds	$71,205,946	$4
3.	Market Value of Stock and Bonds	74,904,545	4
4.	Net Railway Operating Income Capitalized at 6%	70,320,537	4
5.	Annual Rental Paid by Government Capitalized at 6%	.....	..
6.	Amount allowed in Ex Parte 74	.....	..
7.	Total	$216,431,028	$12
8.	Average of above	$72,143,676	$4

Five year average, 1917 to 1921 inclusive.
$1,242,538,689 divided by 19 items equals $65,396,773.
$710,350 divided by 19 items equals $37,387.

Exhibit No. 1.

Chicago, Saint Paul, Minneapolis and Omaha Railway Company.

Value of Road Operated—Entire Line.

1917.		1918.		1919.		1920.		1921.		Avg. for 5 yrs.
.....	1,749.19	.....	1,749.19	.....	1,749.19	.....	1,749.19	.....	1,749.19	1,749.19
Value.	Per mile of road.	Value.	Per mile of road.	Value.	Per mile of road.	Value.	Per mile of road.	Value.	Per mile of road.	Per mile of road.
$71,205,946	$40,708	$71,167,946	$40,686	$71,180,946	$40,694	$74,305,946	$42,480	$74,820,146	$42,774	$41,468
74,904,545	42,822	67,067,175	38,342	65,091,407	37,212	64,121,790	36,658	62,614,187	35,796	38,166
70,320,537	40,202	43,745,445	25,008	44,620,752	25,509	27,358,273	15,641	34,422,489	19,679	25,208
.....	.....	82,193,711	46,990	82,193,711	46,990	82,193,711	46,990	.....	.....	x46,990
.....	.....	.....	.....	.....	.....	79,010,136	45,169	.....	.....	xx45,169
$216,431,028	$123,732	$264,174,167	$151,026	$263,086,816	$150,405	$326,989,856	$186,938	$171,856,822	$98,249	
$72,143,676	$41,244	$66,043,542	$37,757	$65,771,704	$37,601	$65,397,971	$37,388	$57,285,607	$32,750	$37,387

$96,773.
$37,387.

xThree year average.
xxOne year average.

Exhibit No. 2.

Chicago, Saint Paul, Minneapolis and Omaha Railway Company.

Assignment of Property to State of Nebraska.

	1917.	1918.	1919.	1920.	1921.	Ac
1. Value of Entire Line as represented by Par Value of Stocks and Bonds	$71,205,946	$71,167,946	$71,180,946	$74,305,946	$74,820,146	$
Apportioned to State of Nebraska on basis of:						
2. Railway Operating Revenues	$8,224,287	$7,209,313	$6,206,978	$7,742,680	$9,150,504	$
3. Transportation Train Miles	9,926,109	9,629,023	8,854,910	10,625,750	11,380,144	
4. Traffic Units	5,076,984	4,554,749	3,573,283	4,867,039	5,723,741	
5. Use of Property	7,547,830	7,052,743	6,000,554	7,816,986	9,255,252	
6. Total	$30,775,210	$28,445,828	$24,635,725	$31,052,455	$35,509,641	$
7. Value of State of Nebraska (Average of Four)	$7,693,803	$7,111,457	$6,158,931	$7,763,114	$8,877,410	$
8. Miles of Road Operated in Nebraska	308.39	308.39	308.39	308.39	308.39	
9. Value per Mile of Road Operated	$24,948	$23,060	$19,971	$25,173	$28,786	
Ratios allotted to State of Nebraska:						
10. Railway Operating Revenues	11.55	10.13	8.72	10.42	12.23	
11. Transportation Train Miles	13.94	13.53	12.44	14.30	15.21	
12. Traffic Units	7.13	6.40	5.02	6.55	7.65	
13. Use of Property	10.60	9.91	8.43	10.52	12.37	

Exhibit No. 2.

Chicago, Saint Paul, Minneapolis and Omaha Railway Company.

Assignment of Property to State of Nebraska.

	1917.	1918.	1919.	1920.	1921.	Accumulated total.	Average for five years.	Average per mile of road.	
alue									Entire
....	$71,205,946	$71,167,946	$71,180,946	$74,305,946	$74,820,146	$362,680,930	$72,536,186	$41,468	Line
is of:									
....	$8,224,287	$7,209,313	$6,206,978	$7,742,680	$9,150,504	$38,533,762	$7,706,753	$24,990	Nebraska
....	9,926,109	9,629,023	8,854,910	10,625,750	11,380,144	50,415,936	10,083,187	32,696	"
....	5,076,984	4,554,749	3,573,283	4,867,039	5,723,741	23,795,796	4,759,159	15,432	"
....	7,547,830	7,052,743	6,000,554	7,816,986	9,255,252	37,673,365	7,534,673	24,432	"
....	$30,775,210	$28,445,828	$24,635,725	$31,052,455	$35,509,641	$150,418,859	$30,083,772	$97,550	"
r)..	$7,693,803	$7,111,457	$6,158,931	$7,763,114	$8,877,410	$37,604,715	$7,520,943	$24,388	"
....	308.39	308.39	308.39	308.39	308.39	1,541.95	308.39		
....	$24,948	$23,060	$19,971	$25,173	$28,786	.....	$24,388		
....	11.55	10.13	8.72	10.42	12.23				
....	13.94	13.53	12.44	14.30	15.21				
....	7.13	6.40	5.02	6.55	7.65				
....	10.60	9.91	8.43	10.52	12.37				

Exhibit No. 3.

Chicago, Saint Paul, Minneapolis and Omaha Railway Company.

Assignment of Property Value to State of Nebraska.

	1917.	1918.	1919.	1920.	1921.	Accu
1. Value of Entire Line as represented by Market Value of Stocks and Bonds	$74,904,545	$67,067,175	$65,091,407	$64,121,790	$62,614,187	$3
Apportioned to State of Nebraska on basis of:						
2. Railway Operating Revenues	$8,651,475	$6,793,905	$5,675,971	$6,681,491	$7,657,715	$
3. Transportation Train Miles	10,441,694	9,074,189	8,097,371	9,169,415	9,523,618	
4. Traffic Units	5,340,694	4,292,299	3,267,588	4,199,977	4,789,985	
5. Use of Property	7,939,881	6,646,357	5,487,206	6,745,612	7,745,375	
6. Total	$32,373,744	$26,806,750	$22,528,136	$26,796,495	$29,716,693	$1
7. Value State of Nebraska (Average of Four)	$8,093,436	$6,701,687	$5,632,034	$6,699,124	$7,429,174	$
8. Miles of Road Operated, Nebraska	308.39	308.39	308.39	308.39	308.39	
9. Value per Mile of Road Operated	$26,244	$21,731	$18,263	$21,723	$24,090	

Exhibit No. 3.

Chicago, Saint Paul, Minneapolis and Omaha Railway Company.

Assignment of Property Value to State of Nebraska.

1917.	1918.	1919.	1920.	1921.	Accumulated total.	Average for five years.	Average per mile of road.	
$74,904,545	$67,067,175	$65,091,407	$64,121,790	$62,614,187	$333,799,104	$66,759,821	$38,166	Entire Line
$8,651,475	$6,793,905	$5,675,971	$6,681,491	$7,657,715	$35,460,557	$7,092,111	$22,997	Nebraska
10,441,694	9,074,189	8,097,371	9,169,415	9,523,618	46,306,287	9,261,257	30,031	"
5,340,694	4,292,299	3,267,588	4,199,977	4,789,985	21,890,543	4,378,109	14,197	"
7,939,881	6,646,357	5,487,206	6,745,612	7,745,375	34,564,431	6,912,886	22,416	"
$32,373,744	$26,806,750	$22,528,136	$26,796,495	$29,716,693	$138,221,818	$27,644,363	$89,641	"
$8,093,436	$6,701,687	$5,632,034	$6,699,124	$7,429,174	$34,555,455	$6,911,091	$22,410	"
308.39	308.39	308.39	308.39	308.39	1,541.95	308.39		
$26,244	$21,731	$18,263	$21,723	$24,090	.....	$22,410		

Exhibit No. 4.

Chicago, Saint Paul, Minneapolis and Omaha Railway Company.

Assignment of Property Value to State of Nebraska.

	1917.	1918.	1919.	1920.	1921.
1. Value of Entire Line as represented by Net Railway Operating Income Capitalized at 6%	$70,320,537	$43,745,335	$44,620,752	$27,358,273	$34,422,48
Apportioned to State of Nebraska on basis of:					
2. Railway Operating Revenues	$8,122,022	$4,431,402	$3,890,930	$2,850,732	$4,209,87
3. Transportation Train Miles	9,802,683	5,918,744	5,550,822	3,912,233	5,235,66
4. Traffic Units	5,013,854	2,799,701	2,239,962	1,791,967	2,633,32
5. Use of Property	7,453,977	4,335,163	3,761,529	2,878,090	4,258,06
6. Total	$30,392,536	$17,485,010	$15,443,243	$11,433,022	$16,336,91
7. Value State of Nebraska (Average of 4)	$7,598,134	$4,371,252	$3,860,811	$2,858,256	$4,084,22
8. Miles of Road Operated in Nebraska	308.39	308.39	308.39	308.39	308.3
9. Value per Miles of Road Operated	$24,638	$14,174	$12,519	$9,268	$13,24

Exhibit No. 4.

Chicago, Saint Paul, Minneapolis and Omaha Railway Company.

Assignment of Property Value to State of Nebraska.

1917.	1918.	1919.	1920.	1921.	Accumulated total.	Average for five years.	Average per mile of road.	
),320,537	$43,745,335	$44,620,752	$27,358,273	$34,422,489	$220,467,386	$44,093,477	$25,208	Entire Line
,122,022	$4,431,402	$3,890,930	$2,850,732	$4,209,870	$23,504,956	$4,700,991	$15,244	Nebraska
,802,683	5,918,744	5,550,822	3,912,233	5,235,661	30,420,143	6,084,029	19,728	"
,013,854	2,799,701	2,239,962	1,791,967	2,633,320	14,478,804	2,895,761	9,390	"
,453,977	4,335,163	3,761,529	2,878,090	4,258,062	22,686,821	4,537,364	14,713	"
,392,536	$17,485,010	$15,443,243	$11,433,022	$16,336,913	$91,090,724	$18,218,145	$59,075	
,598,134	$4,371,252	$3,860,811	$2,858,256	$4,084,228	$22,772,681	$4,554,536	$14,769	"
308.39	308.39	308.39	308.39	308.39	1,541.95	308.39		
$24,638	$14,174	$12,519	$9,268	$13,244	.....	$14,769		

Exhibit No. 5.

Chicago, Saint Paul, Minneapolis and Omaha Railway Company.

Assignment of Property Values to State of Nebraska.

	1918.	1919.	1920.	Accumulated total.	Average for three years.	Average per mile of road.	
1. Value of Entire Line as calculated by Annual Rental paid by Government Capitalized at 6%.....	$82,193,711	$82,193,711	$82,193,711	$410,968,555	$82,193,711	$46,990	Entire Line
Apportioned to State of Nebraska on basis of:							
2. Railway Operating Revenues.....	$8,326,223	$7,167,292	$8,564,585	$24,058,100	$8,019,367	$26,004	Nebraska
3. Transportation Train Miles.....	11,120,809	10,224,898	11,753,701	33,099,408	11,033,136	35,777	"
4. Traffic Units	5,260,397	4,126,124	5,383,688	14,770,209	4,923,403	15,965	"
5. Use of property	8,145,397	6,928,930	8,646,778	23,721,105	7,907,035	25,640	"
6. Total	$32,852,826	$28,447,244	$34,348,752	$95,648,822	$31,882,941	$103,386	"
7. Value State of Nebraska (Average of 4)	$8,213,207	$7,111,811	$8,587,188	$23,912,206	$7,970,735	$25,846	"
8. Miles of Road Operated in Nebraska	308.39	308.39	308.39	925.17	308.39		
9. Value per Mile of Road Operated..	$26,633	$23,061	$27,845		$25,846		

Exhibit No. 6.

Chicago, Saint Paul, Minneapolis and Omaha Railway Company.

Assignment of Property Values to State of Nebraska.

	1920.	Average per mile of road.	
1. Value of Entire Line as Claimed in Ex Parte 74	$86,020,834	.....	.....
x 2. Value of Entire Line, as allowed by Interstate Commerce Commission in Ex Parte 74	$79,010,136	$45,169	Entire Line
Apportioned to State of Nebraska on basis of:			
3. Railway Operating Revenues	$8,232,856	$26,696	Nebraska
4. Transportation Train Miles	11,298,449	36,637	"
5. Traffic Units	5,175,164	16,781	"
6. Use of Property	8,311,866	26,952	"
7. Total	$33,018,335	$107,066	"
8. Value State of Nebraska (Average of 4)	$8,254,584	$26,767	"
9. Miles of Road Operated in Nebraska	308.39		
10. Value per Mile of Road Operated	$26,767		

xValue of all line- in Western District as claim- by carriers was reduced 8.15% by the Interstate Commerce Commission, and the reduced value was taken as the basis upon which a reasonable return should be calculated.

Exhibit No. 7.

Chicago, Saint Paul, Minneapolis and Omaha Railway Company.

Recapitulation of Values of Railway Property State of Nebraska.

Value of railway property in Nebraska as determined from Exhibit—	1917.		1918.		1919.		1920.	
	Total State.	Per mi. of rd.	Total State.	Per mi. of rd.	Total State.	Per mi. of rd.	Total State.	Pr
No. 2 Par Value of Stock and Bonds	$7,693,803	$24,948	$7,111,457	$23,060	$6,158,931	$19,971	$7,763,114	$
No. 3 Market Value of Stock and Bonds	8,093,436	26,244	6,701,687	21,731	5,632,034	18,263	6,699,124	
No. 4 Net Railway Operating Income Capitalized at 6%	7,598,134	24,638	4,371,252	14,174	3,860,811	12,519	2,858,256	
No. 5 Annual Rental Paid by Government Capitalized at 6%	.....	.....	8,213,207	26,633	7,111,811	23,061	8,587,188	
No. 6 Amount allowed in Ex Parte 74	.....	.....	.....	.....	.....	.....	8,254,584	
Total	$23,385,373	$75,830	$26,397,603	$85,598	$22,763,587	$73,814	$34,162,266	$1
Average of Above	$7,795,124	$25,277	$6,599,401	$21,400	$5,690,897	$18,454	$6,832,453	$

$127,099,641 divided by 19 equals $6,689,455
$412,138 divided by 19 equals $21,691

xThree year Average.
xxOne Year Average.

Exhibit No. 7.

Chicago, Saint Paul, Minneapolis and Omaha Railway Company.

Recapitulation of Values of Railway Property State of Nebraska.

1917.		1918.		1919.		1920.		1921.		Aver. for 5 years.	
Total State.	Per mi. of rd.	Total State.	Per mi. of rd.	Total State.	Per mi. of rd.	Total State.	P'r mi. of rd.	Total State.	Per mi. of rd.	Total State.	Per mi. of rd.
$7,693,803	$24,948	$7,111,457	$23,060	$6,158,931	$19,971	$7,763,114	$25,173	$8,877,410	$28,786	$7,520,943	$24,388
8,093,436	26,244	6,701,687	21,731	5,632,034	18,263	6,699,124	21,723	7,429,174	24,090	6,911,091	22,410
7,598,134	24,638	4,371,252	14,174	3,860,811	12,519	2,858,256	9,268	4,084,228	13,244	4,554,536	14,869
.....	.....	8,213,207	26,633	7,111,811	23,061	8,587,188	27,845	.....	.....	x7,970,735	x25,846
.....	.....	.....	.....	.....	.....	8,254,584	26,767	.....	.....	xx8,254,584	xx26,767
3,385,373	$75,830	$26,397,603	$85,598	$22,763,587	$73,814	$34,162,266	$110,776	$20,390,812	$66,120	.....	.....
7,795,124	$25,277	$6,599,401	$21,400	$5,690,897	$18,454	$6,832,453	$22,155	$6,796,937	$22,040	$6,689,455	$21,691

455
391

whowing the ratio of assessed valuation to appraised value of 46.5 per cent.

C. B. & Q. Exhibit 3, being an affidavit of Pollock Parmalee showing examination of 1,300 mortgages filed of record in Nebraska in 66 counties between March 31, 1921, and March 31, 1922, for a total consideration of $9,885,152.00 covering 268,522 acres valued at $36,604,903.00 by the owners and $29,406,343 by the loan companies' appraisements, and assessed at $16,680,439.00 in 1921 and $16,295,888.00 in 1922, which gives a ratio of assessed value to owners value of 45.5 per cent in 1921 and 44.5 per cent in 1922, and a ratio of assessed value to loan companies' appraisement of 56.7 per cent in 1921 and 55.4 per cent in 1922.

C. B. & Q. Exhibit 4, being a volume containing 138 affidavits; the affidavit of Carl W. Krohl being a summary of the re-
169 maining 137 affidavits. These 137 affidavits were made by individuals of long residence in the counties where they reside and concerning which they testify. They were all experts and qualified as to the value of real estate in their respective counties. The affidavits cover 54 different counties in Nebraska, and show that the percentage of assessed value of loans in said counties to the fair market value thereof was 61.8 per cent in 1921 and 61.9 per cent in 1922.

C. B. & Q. Exhibit 5, containing the affidavits of eleven county and ex-county assessors comparing the fair market value of the land on April 1, 1922, to the average assessed value in the county where the affiant resides and the percentage of the market value of the assessed value per acre in 1922. The affidavit of Charles C. Parmalee being a summary of the other affidavits whowing that the assessed value of the real estate in the counties covered was 67 per cent of the fair market value during the same period. The Parmalee affidavits further shows that he interviewed four other present county assessors in as many counties in Nebraska who refused to make affidavits but who stated to him that they assessed farm lands in their re-
170 spective counties at from 50 to 75 per cent of the fair market value.

C. B. & Q. Exhibit 6, being the affidavit of C. C. Sadler, an abstractor of many years experience in Douglas County, Nebraska, and containing the names of grantors and grantees, the description of the property and amount of consideration and description of the consideration of 5,671 sales of real estate in the city of Omaha during the period from April 1, 1921, to April 1, 1922. The total consideration for those sales was $21,160,679.00. The 1922 tax assessment of the record against this property for 1922 was $13,525,290.00 being 63.9 per cent of the consideration evidenced by the deeds.

C. B. & Q. Exhibit 7, being the affidavit of Verne Hedge, an abstra-tor of 19 years experience, residing in the city of Lincoln, Nebraska. He checked all the sales and transfers of city property of record in Lancaster County, Nebraska, during the month of March, 1922, showing 225 transfers of city property for which the actual bonafide consideration is shown, the total consideration being $648,-637.00 and the 1922 tax assessment against said property be-ng

$391,493.00 showing the assessment to be 60.3 per cent of the
171 consideration shown of record.

C. B. & Q. Exhibit 9, being an affidavit of Pollock Parmalee containing a schedule showing a comparison of the 1922 assessment in Nebraska with the average value per acre of lands in Nebraska as revealed by the 1920 United States Census. The average value per acre of lands and improvements in Nebraska according to said census was $87.91, and the assessed value per acre of lands and improvements in Nebraska in 1922, was $37.07 per acre, or 42.17 per cent of the valuation as shown by the census department.

C. B. &. Q. Exhibit 10, being the affidavit of C. C. Parmalee bound with the affidavits of six county assessors of Nebraska showing that the assessments valued farm lands in their respective counties at 72 per cent of the fair market value and that they intentionally assessed it a certain percentage below actual value. The assessor of Richardson County stated that he assessed at 85% of, or 15% less than 1920 assessed valuation.

C. B. & Q. Exhibit 11, being the affidavit of A. E. Anderson, Federal Agricultural Statistician for the state of Nebraska. He prepared a statement from the United States census records showing as to each county in Nebraska the average value per acre of lands then in *in* 1900, 1910, and 1920; that the average value per acre
172 of the land alone in 1900 was 16.27; in 1910, 41.80; and in 1920, 78.87, or an increase in value of lands from 1900 to 1920 of 384 per cent, and that the average value per acre of lands and buildings in Nebraska in 1920 was $87.91.

C. B. & Q. Exhibit 13, being another affidavit of A. E. Anderson, Federal Agricultural Statistician for Nebraska, stating that he had obtained information as to value of lands and improvements thereon in Nebraska from over one thousand correspondents throughout the state; that from the information so received he prepared a statement as to each county in the state which statement is attached to his affidavit, showing the average value per acre of lands from 1916 to 1922 inclusive; that the average value per acre of land alone in Nebraska was $76.00 and the average value per acre of land and improvements was $85.00 per acre as of March 1, 1922.

C. B. & Q. Exhibit 14, being an affidavit of Pollock Parmalee to which is attached a copy of a statement issued by P. F. Bross, Secretary of Finance, W. H. Osborne, Jr., Secretary of the Board of Equalization, of Nebraska, and the county officers of Nebraska, showing the total transfers, acres and average sale price per acre in
173 each county during the period from July 1, 1918, to July 1, 1919, and the ratio of assessed value to sale value; that from said statement affiant computed the total sales value to be $174,475,750.04, and the total assessed value to be $71,168,907.50 covering 2,948,554 acres, and showing an average sale value of 59.17 per acre, and an average assessed value of 24.13 per acre in 1920, said assessed value being 40.78 per cent of the average sale value for the entire state.

C. B. & Q. Exhibit 21, an affidavit of Pollock Parmalee bound with affidavits of a number of land owners in Cass County, Nebraska from which Mr. Parmalee prepared a statement showing the land

ransfers in Cass County between April 1, 1921, and April 1, 1922, howing the average sale price per acre to be $181.63, and the aver- ge assessed value in 1922 was $99.86 per acre, that the total consid- erations for the sale of 2,081 acres was $374,020.00 and the fair cash market value as of April 1, 1922, was $371,825.00, which actual market value is 99.4 per cent of the sale consideration, or an average of $178.67 per acre; that from the affidavits secured from sixteen grantees of land in four counties in Nebraska, Mr. Parmalee com-
puted that the fair cash market value as of April 1, 1922, of
174 the lands so sold and covered by said affidavits was 100 per cent of the sale consideration recited in the conveyances.

C. B. & Q. Exhibit 25, being an affidavit of R. D. Pollard, showing hat from an examination of the report of the state tax commissioner of Nebraska for the years 1921-1922, the total amount of intangible personal property, not including corporate franchises, returned for taxation and valued in 1922 at 25 per cent of its actual value is but $35,316,423.00, and that 100 per cent value of such property is $141,265,692.00; that from an examination of the Bankers' Di- rectory of the United States for July, 1922, it appears that the de- posits in the Banks in Nebraska aggregated for that month, $432,- 020,390.00, showing that the percentage of value of intangible prop- erty listed for taxation in Nebraska for 1922 which includes not only bank deposits but promissory notes and choses in action was but 2.7 per cent of the actual value of the bank deposits in the state during that year; that from the Agricultural Bulletin of the United States Census of 1920 it appears that animals of all species on the farms in Nebraska were of the value of $326,002,105.00 and that
from the report of the State Tax Commissioner of Nebraska
175 for 1921-1922 all animals in Nebraska were valued for taxation in 1922 at but $146,562,301.00, or but 44.95 per cent of the census value of animals in said state.

C. B. & Q. Exhibit 28 being an analysis of the taxable property by classes in Nebraska in 1922, as made by the State Tax Commissioner of Nebraska, showing a total valuation of all property in the state of $3,191,747,870, of which farm lands represented 56.08 per *per* cent and farm personal property 7.95 per cent; city real estate, 16.89 per cent; city personal property, 8.70 per cent; railroads, 9.91 per cent, and other property, .47 per cent.

Plaintiff offered in evidence a copy of the complaint of the plain- tiff which was filed with said board of equalization in 1922, which complaint is as follows:

176 Before the State Board of Equalization and Assessment of Nebraska.

In the Matter of the Valuation of the Property of THE CHICAGO & NORTH WESTERN RAILWAY COMPANY in Nebraska for Assessment for the Year 1922.

Complaint of the Chicago & North Western Railway Company.

Comes now the Chicago & North Western Railway Company and files this its complaint before the State Board of Equalization and

Assessment for consideration before the said board at its meet commencing on the first Monday in July and also on the third M day in July for the year 1922, and asks that the valuation of property in Nebraska for assessment purposes be equalized and duced in the following particulars:

1.

The valuation of said company's property in Nebraska does exceed thirty million dollars, and the value fixed for said prop by this board for the year 1922 is grossly excessive, unjust, and equitable.

2.

The property of said company has been valued by this board only at an amount grossly in excess of its true value, but
177 valuation of other property in each county in the state by various county assessors has been made at not to exceed 5 of the true value of such other property, which constitutes a crimination against your complainant in violation of the Const tion and Laws of Nebraska, and in violation of the Fourtee Amendment to the Constitution of the United States, guarantee to your complainant equal protection of the law. Your complain says that to so discriminate against it and in favor of other prop in each county in the state denies to your complainant equal tection of the law.

3.

This complaint applies to all valuations and assessments of c plainant's property made or reviewed by the State Board of Equal tion and Assessment.

Wherefore, your complainant prays,

First, that the valuation of complainant's property be fixed not to exceed thirty million dollars, and

Second, that your complainant be placed on a basis of equal with the valuations fixed for other property in such county in state; to-wit, not exceeding 50% of the true value thereof
178 taxing purposes; or that the valuations of other property each county in the state be raised to full 100% value ther so that complainant's property will be assessed on a basis of equal with other property in each county in the state.

Dated this third day of July, 1922. Chicago & North West Railway Company, By —— ——, Its Attorney.

Plaintiff offered in evidence, in connection with the compla filed with the Board of Equalization in 1922, the bills of excepti showing the evidence taken and proceedings had before the s Board of Equalization in July, 1921, and in July, 1922, which s bills of exception are as follows:

179 Ex. 29.

C. B. Q. C. W. P.

Before the State Board of Equalization and Assessment of the State of Nebraska.

In re Assessment and Equalization of Steam Railroads in the State of Nebraska.

Complainant's Bill of Exceptions.

TRANSCRIPT OF PROCEEDINGS HAD AND TESTIMONY TAKEN BEFORE SAID BOARD TUESDAY, JULY 25, 1922.

John S. Taggart,

Official Reporter,

Fourth Judicial District,

Nebraska.

180 Before the State Board of Equalization and Assessment of the State of Nebraska.

In re Assessment and Equalization of the Property in the State of Nebraska of the Following Railroads: UNION PACIFIC RAILROAD COMPANY, ST. JOSEPH & GRAND ISLAND RAILWAY CO., CHICAGO, BURLINGTON & QUINCY RAILROAD CO., CHICAGO & NORTHWESTERN RAILWAY COMPANY, CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY CO.

Appearances: Hon. D. M. Amsberry, Secretary of State, presiding in the absence of the Governor; Hon. George W. Marsh, Auditor of Accounts; Hon. D. B. Cropsy, Treasurer; Hon. W. H. Osborne, Jr., Tax Commissioner; Hon. Hugh Lamaster, Assistant Attorney General.

Mr. Byron Clark, Solicitor C., B. & Q. R. R. Co.

Mr. C. A. Magaw, General Attorney U. P. R. R. Co. and St. Joe & G. I. Ry. Co.

Mr. Wymer Dressler, Attorney C. & N. W. Ry.

On Tuesday, July 25th, 1922, the following proceedings were had in the above entitled matter:

181 The Chairman: Gentlemen, there is a quorum present and you may proceed.

Mr. Clark: Have you your abstract complete?

Mr. Osborne: No, the abstract is not complete, but I think we can stipulate as to that, can we not?

Mr. Clark: That will be satisfactory to us.

The Chairman: Gentlemen; we will now see what the Secretary has to present.

Mr. Osborne: I have nothing to present except that these applications have been filed for rehearing on the valuation of the Northwestern, St. Paul, Minneapolis & Omaha C. B. & Q., Union Pacific and St. Joe & Grand Island. Do you want to take them up separately, Mr. Clark, or how?

Mr. Clark: If it is agreeable to the Board I thought we would proceed as we did last year, to put in one record and let everything offered be on behalf of each road separately, so that each road, if they wish, may use the record afterwards. Is there any objection to that, Mr. Lamaster?

Mr. Lamaster: I really had not thought of the procedure as far as that is concerned. I should think there would be no ob-
182 jection to that.

Mr. Clark: There is the record made last year (indicating).

Mr. Lamaster: I do not see any objection to that.

Mr. Clark: Your Honorable Board, the several railroad companies, the Union Pacific Railroad Company, the St. Joseph & Grand Island Raillway Company, The Missouri Pacific——

Mr. Osborne (interrupting): There is no protest here by the Missouri Pacific.

Mr. Clark (Continuing:)—the Chicago & Northwestern Railway Company, the Chicago, St. Paul, Minneapolis & Omaha Railroad Company, the Chicago, Burlington & Quincy Railroad Company—is that all?

Mr. Osborne: I think so.

Mr. Clark: Each offers in its own behalf each exhibit and all of the evidence offered at this hearing, except the Union Pacific in its amended——

Mr. Osborne: In its amended Form G statement.

Mr. Magaw: Yes.

Mr. Clark: And the same for the Burlington, which will be the evidence for those two roads.

183 Mr. Osborne: The Burlington has not filed on yet.

Mr. Clark: We are just filing it.

Mr. Magaw: We will call Mr. Scribner,

A. W. Scribner, called as a witness on behalf of the complainant and after being duly sworn testified as follows:

Examined by Mr. Magaw:

Q. Please state your name?

A. A. W. Scribner.

Q. What is your occupation?

A. Tax Commissioner of the Union Pacific Railroad Company and the St. Joseph and Grand Island Railway Company.

Q. Mr. Scribner, you are familiar with the original statement on Form G that was filed by the Union Pacific Railroad Company, are you?

A. Yes sir.

Q. And did you subsequently file a revised statement for that railroad on form G?

A. Yes sir.

184 Q. And this is a copy of it? (Showing witness paper.)

A. Yes sir.

Q. I show you Exhibit "1" and ask you to state whether that is a copy of the revised statement on Form G?

A. Yes sir, it is.

Mr. Magaw: I will ask the Commission if it can be considered that the original statement on Form G for the Union Pacific Railroad Company can be considered in evidence and copies will be furnished later. I do not have them at this time.

Mr. Osborne: That can be taken from my office and put in the record.

Which said document was marked Exhibit "A", and same is returned herewith and attached hereto as follows:

185 **Exhibit A to Scribner's Testimony.**

(Copy.)

Copy of Ex. "A."

Form G.

Statement Showing Mileage, Capital Stock, Earnings, and Operating Expense of the Union Pacific Railroad Company for the Year Ending December 31, 1921.

Mileage in Nebraska (Average)		1,211.59
Capital Stock:		
Common $222,291,600		
Preferred 99,543,500		
		$321,835,100.00
Gross Earnings in Nebraska:		
Passenger	$6,900,338.91	
Freight	31,940,339.15	
Other Sources.....	4,279,310.55	
		43,119,988.61
Operating Expenses for Nebraska, including taxes, Maintenance, Repairs and Renewals, excluding Additions and Betterments.....		30,269,632.94
Net Earnings in Nebraska.....		12,830,355.67

Earnings per mile Gross in Nebraska.....	35,589.3
Earnings Per Mile Net in Nebraska.....	10,606.1
Interest on Debt.....	9,605,940.2
Dividends made	26,210,900.0

I, (Signes) H. J. Stirling, Auditor, of the Union Pacific Railroad Company do solemnly swear that the above statement is true and correct to the best of my knowledge and belief. (Signed) H. J. Stirling, Auditor.

Subscribed in my presence and sworn to before me this 23rd day of March, A. D. 1922. (Signed) Geo. W. Tribble. [Seal.]

NOTE.—The above statement should be sworn to by the President secretary or treasurer of the company and should be made to the auditor of State during the month of January. (See Sec. 88, Chapter 16 Compiled Stat. of Nebraska 1887.)

186 Mr. Osborne: There is no objection to this supplemental Form G going in, but I would also like to have the original in at the same time.

Mr. Magaw: It is so understood. That will be considered in evidence as well.

Mr. Osborne: I do not object to that at all.

Mr. Magaw: We then introduce in evidence the revised statement of Form G for the Union Pacific Railroad Company, and we would like the same stipulation with regard to the original statement made by the St. Joseph & Grand Island Railway Company Form G, that it be considered in evidence.

Mr. Osborne: Why not submit it right now?

Mr. Magaw: I haven't the copies here—if you have the original

Mr. Osborne: I have the original in my office just filed today.

Mr. Magaw: My idea was we would simply have the reporter make copies of the original of Form G and attach them to the record and let the record show they were introduced at this time. Is that satisfactory?

187 Mr. Osborne: Yes, and let it be shown also that the Form G statement of the St. Joe & Grand Island is filed as of this date.

Mr. Magaw: Yes, that is the revised statement.

Mr. Osborne: No, there is no revised statement of the St. Joe & Grand Island.

The Witness: Through a misapprehension no original statement on Form G was filed for the St. Joseph & Grand Island Railway.

Q. Until this morning?

A. Until this morning. Therefore that is the original statement.

Mr. Magaw: I will ask the reporter to mark the original statement Form G for the St. Joseph & Grand Island Railway Company, as Exhibit 2.

Q. Look at Ex. "2," Mr. Scribner, and state whether or not that is a correct copy of the original statement Form G filed this morning by the St. Joseph & Grand Island.

A. It is.

Mr. Magaw: We now offer Exhibits 1 and 2.

Which said documents, Exhibits "1" and "2," so offered and received in evidence, are returned herewith as follows:

88 **Exhibit 1 to Scribner's Testimony.**

Copy of Exhibit "1."

Form G.

Revised Statement.

tatement Showing Mileage, Capital Stock, Earnings, and Operating Expenses of the Union Pacific Railroad Company for the Year Ending December 31, 1921.

ileage in Nebraska (Average)		1,211.59
pital Stock:		
Common	222,291,600	
Preferred	99,543,500	
		321,835,100.00
oss Earnings in Nebraska:		
Passenger	$6,900,338.91	
Freight	31,940,339.15	
Other sources	4,279,310.55	
		43,119,988.*00*
erating expenses for Nebraska including Taxes, Maintenance, Repairs and Renewals, excluding additions and betterments		32,638,836.63*
Earnings in Nebraska		10,481,151.98
rnings per mile gross in Nebraska		35,589.59
rnings per mile net in Nebraska		8,650.74
erest on debt		9,605,940.20
idends made		26,210,900.00

*Includes

Operating Expenses	$28,638,839.11
Taxes	2,999,002.63
Equipment Rentals	1,625,814.18
Joint Facility Rents	241,377.72
Uncollectible Railway Revenues	6,558.43
	$32,638,836.63

(The following rider is attached to face of Exhibit:)

In compliance with the requirements of the railway Commissi
of the State of Nebraska, Union Pacific Railroad Compa
189 furnishes statements of Earnings and Expenses in that Sta
in the compilation of which it has apportioned Revenues fro
Interstate Traffic and Expenses incurred in connection with su
traffic in Nebraska and other States, on basis prescribed by said co
mission. For the purpose of this report, Revenues, Expenses, Tax
Equipment Rents, Joint Liability Rents and uncollectible Railw
Revenue were apportioned as between Nebraska and other States i
accordance with the formulas prescribed by that Commission.

This road certifies to the correctness of the figures reported here
ascertained according to the formulas prescribed, but in so doing
is not to be understood as admitting or approving the correctness
the formulas.

I, H. A. Toland, Auditor of the Union Pacific Railroad Compa
do solemnly swear that the above statement is true and correct to th
best of my knowledge and belief. (Signed) H. A. Toland, Audito

Subscribed in my presence and sworn to before me this 18th da
July A. D. 1922. (Signed G. W. Tribble. (Seal.)

NOTE.—The above statement should be sworn to by the Presid
Secretary or Treasurer of the Company and should be made to th
Auditor of State during the month of January. (See Sec. 88 Cha
16, Compiled Statues of Neb. 1887.)

190 **Exhibit "2" to Scribner's Testimony.**

*Statement Showing Mileage, Capital Stock, Earnings, and Operati
Expenses of the* the *St. Joseph and Grand Island Railway Co
pany for the Year Ending December* 31, 1921.

Mileage in Nebraska	112.8
Capital Stock	13,599,400
Gross Earnings in Nebraska	1,769,971
Passenger	144,980
Freight	1,525,009
Other Sources	99,972
Operating Expenses for Nebraska, including Taxes, Maintenance, Repairs and Renewals, excluding Additions and Betterments	1,551,154
Net Earnings in Nebraska	218,817
Earnings per Mile, Gross	15,714
Earnings per Mile, Net	1,942
Interest on Debt	274,993
Dividends Made	Non

In compliance with the requirements of the Railway Comm
sion of the State of Nebraska, The St. Joseph & Grand Island Railw
Company furnishes statements of Earnings and Expenses in th

State, in the compilation of which it has apportioned Revenues from Interstate Traffic and Expenses incurred in connection with such traffic to Nebraska and other States, on basis prescribed by the said Commission. For the purpose of this report, Revenues, Taxes, Expenses, Equipment Rents, Joint Facility Rents, and Uncollectible Railway Revenue were apportioned as between Nebraska and
191 other States, in accordance with the formulas prescribed by that Commission.

This road certifies to the correctness of the figures reported hereon, ascertained according to the formulas prescribed, but in so doing, it is not to be understood as admitting or approving the correctness of the formulas.

I, L. R. Wood, Auditor, of the St. Joseph and Grand Island Railway Company, do solemnly swear that the above statement is true and correct to the best of my knowledge and belief. (Signed) L. R. Wood, Auditor.

Subscribed in my presence and sworn to before me this 22nd day of July, A. D. 1922. Lewis D. Brown. (Seal.)

NOTE.—The above statement should be sworn to by the President, Secretary or Treasurer of the Company and should be made to the Auditor of State during the month of January. (See Section 88, Chapter 16, Compiled Statutes of Nebraska, 1887.)

192 Q. Mr. Scribner, I will ask you to look at Exhibit "3" and state what that is.

Mr. Osborne: Before we leave this——

Mr. Magaw: Very well——

Mr. Osborne: I am wondering if we might agree that this statement Form G, insofar as it relates to the St. Joe & Grand Island, was due to be filed by the Company in January of the current year?

Mr. Magaw: Yes.

The Witness: That is correct.

Mr. Magaw: Now, read the pending question.

(Question read.)

A. That is a statement showing "Carrier Property"—That is railroad property, belonging to the Union Pacific Railroad Company in the State of Nebraska which is assessed by local assessors and not under the jurisdiction of the State Board of Equalization and Assessment of Nebraska for railroad and assessment purposes.

Q. Is that statement correct?

A. It is.

Mr. Magaw: We offer Exhibit "3" in evidence.

Which said document marked Exhibit "3", so offered and received in evidence, is in the words and figure as follows:

193 **Exhibit 3 to Testimony of Scribner.**

Statement Showing "Carrier Property" Belonging to the Union Pacific Railroad Company in the State of Nebraska Which is Assessed by Local Assessors and Not Under the Jurisdiction of the State Board of Equalization and Assessment of Nebraska for Railroad Assessment Purposes.

Real Estate.	Assessed valuation, year 1921.
Boone County:	
Part S. E. ¼ Sec. 16-20-6, 15.91 acres	$2,700
Buffalo County:	
Kearney:	
Lot 1133	94
Lots 1497, 1498, 1499	346
" 1503, 1504	238
" 1726, 1728	166
" 1734	95
" 1738, 1739	126
" 234	1,620
The Midway Land Co.'s 1st East Lawn Add'n:	
Lot 10, Block 42	6
Nantasket:	
Triangular, Block 63	100

Cheyenne County:		
Part S. W. ¼ Sec. 5-14-51, 20.80 acres		2,640
Colfax County:		
Part N. E. ¼ N. E. ¼ Sec. 13-17-3, 3.63 acres		435
Custer County:		
Callaway Railroad Add'n:		
Lots 1 to 8, Block 56		200
Deuel County:		
Par. Lots 6 & 7, Sec. 30-13-41, 34.00 acres		720
Douglas County:		
City of Omaha:		
Lots 5, 6, 7,	Block F	81,000
" 3, 4, 5, 6,	" O	6,000
" 1, 2, 3, 4, 5, 6, 7, 8,	" P	14,000
" 1, 2, 3, 9, 10, 11, 12,	" 32	22,000
" 1, 2, 3, 4, 5, 6, 7,	" 33	25,000
" 1, 2, 3, 5, 6, 7, 8,	" 34	22,000
Part Lot 2	" 39	300
" " 5, & 7, All 6,	" 63	11,450
Carried Forward		$191,236

Statement Showing "Carrier Property"—Continued.

194		Assessed valuation, year 1921.
Brought forward		$191,236
Part Lots 4, 6, 7 & All 1, 2, 3, 8,	Block 65	30,200
" 1 to 12	" 66	64,000
" 1, 2, 3, 4,	" 67	20,000
" 1 to 8,	" 68	48,000
" 5, 6, 7 & S. 47' Lots 2, 3, 4 & 9" Adj.,	" 88	840,500
" 2, 8, & all Lot 1,	" 95	14,000
" 7, 8 & all 1 to 6,	" 96	25,700
" 4, 6, 8, 9 & all 5,	" 97	17,000
Lots 6, 7 & 20' strip W. Lot 5,	" 187	14,500
" 2 to 7 & strip W. Lots 4 & 5,	" 208	47,000
" 6,	" 227	5,000
" 4 & strip adj.,	" 228	7,000
" 8,	" 310	5,000
" 2, 4, 6, 7, 8,	" 317	21,500
" 3, 4, 7, 8,	" 328	8,000
" 3, 8 & part Lots 1 & 2,	" 354	16,050
" 1, 4 to 7 & N. 66' Lot 3,	" 360	14,250
Chicago St. bet. Blocks 34 & 65		9,000
Davenport St. bet. " 65 & 69		3,700
" " " 66 & 68		2,200
Capitol Ave. " " 68 & 95		5,800
Dodge Street, " " 96 & 97		10,000
Burt Street, " " 334 & 354 (Part)		4,200
" " " " 328 & 360		8,000
[illegible]		4,000
[illegible] Street part in Dodge Street		[illegible]
Seventh Street part in S. T. to S. line Cass St.		5,500

13th Street part bet.	Blocks 354 & 355		55,000
Webster St. " " "	1 & 360		5,000
Alley in S. T.	Block 97		6,000
" " " "	" 65		1,100
" " " "	" 34		2,500
" outside S. T.	" 32		1,500
" " " "	" 354		1,800
" in " "	" 360		500
" " " "	" P		1,500
			1,200

Jefferis' Replat:

Lots 1 to 4, 7, 14, 15, 17 to 22,	Block 2		3,275
" 1 to 6, E. 25' 7 & 8, 11, 13, 14, 19, 20,	" 3		2,050
" 1 to 17,	" 4		4,200
" 1 to 23,	" 5		5,750

Linquest's Addition:

Lots 1, 2, 3 & 29 to 32			1,650

Lands:

Lot 1 in Neb. (3) Sec. 11-15-13,	2.85 acres		5,000
East part Lot 1, " 14,	13.22		26,000
N. E. ¼ S. E. ¼, S. E. of B. & M. (7) Sec. 28	5.15		20,000

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N. E. ¼ S. E. ¼ (Lot 8), Sec. 28	7.00		28,000
Lot 2 in W. ½ S. W. ¼ " 15-16-9,	23.65		1,065
" 28 " 10-15-10,	14.30		2,445

Statement Showing "Carrier Property"—Continued.

	Assessed valuation, year 1921.
Millard:	
Lots 7 to 10, Block 15	1,600
Fractional " 17	50
Carried Forward	$1,618,521
Brought Forward	$1,618,521
City of Omaha Cont'd:	
Lot 1, Block 176	29,000
" 2, " 176	18,800
" 3 & 4, " 176	38,000
" 5 & 6, " 176	48,000
" 7, " 176	18,000
" 8, " 176	22,000
" 1, " 177	23,000
" 2, " 177	18,000
" 3 " 177	18,000
" 4, " 177	31,000
" 5, " 177	22,000
" 6, 7, 8, " 177	158,000
Gage County:	
Part N. E. ¼ S. E. ¼ Sec. 17-2-7, 2.00 acres	90
" S. E. ¼ " " 16-2-7, 5.00 "	2,830
" S. E. ¼ S. W. ¼ " 15 8.25 "	100
Garden County:	

Oshkosh:			
Lot 5, Block 1			225
Hall County:			
Part W. ½ N. E. ¼	Sec. 15-11-9	50.80 acres	8,060
" E. ½N. W. ¼	" 15	9.10 "	1,440
Howard County:			
St. Paul:			
Lot 4, Block 113			25
Lincoln County:			
Lots 5 & 6,	Sec. 1-13-30	89.30 acres	4,160
" 1 to 4,	" 2	182.58 "	
S. ¼ N. W. ¼, N. W. ¼ S. E. ¼; S. ½ S. E. ¼	" 2	200.00 "	17,015
Lots 1 to 5,	" 12	172.10 "	14,775
N. ½ N. W. ¼	" 12	80.00	7,230
Part Lot 4 in S. W. ¼	" 35-14-30	43.65 "	
Lot 5,	" 35	61.30 "	
196			
Part Lot 4 in N. W. ¼	" 35	26.00 "	1,400
Part E. ½ N. W. ¼	" 32	9.20 "	
" N. W. ¼	" 32	13.22 "	
Lot 2	" 7-13-29	13.00 "	425
Part N. E. ¼	" 34-14-30,	45.00 "	5,250
Triang. tract N. E. ¼	" 31	7.55 "	450
N. E. ¼ N. E. ¼	" 27-14-33,	40.00 "	415

Statement Showing "Carrier Property"—Continued.

	Assessed valuation, year 1921.
Brady Island:	
Lot 13, Block 12	400
North Platte:	
Lots 7 & 8, " 84	500
Hershey:	
Lots 1 & 2, " 2	1,200
Carried forward	$2,128,371
Merrick County:	
Brought forward	$2,128,371
Part Island No. 2, S. ½ S. W. ¼ Sec. 13-13-6	1,975
" " " 2, N. W. ¼ " 24	365
Morrill County:	
Part Gov't Lots 3 & 4, Sec. 28-20-50, 84.00 acres	250
" Tax Lot 4, " 28 42.00 "	85
Nance County:	
Part N. ½ N. E. ¼ S. E. ¼ Sec. 11-16-6 12.14 "	2,066

Platte County:

Columbus:

Lots 5 to 8, Block 121	480
Part S. W. ¼ S. E. ¼ Sec. 23-17-1W, 41.41 acres	1,400
" N. W. ¼ " 26 9.20 "	375

Sarpy County:

Platted part Albright's Choice Add'n U. P. Sub. N. ½ N. ½ Sec. 15-14-13:

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Lots "A" & 1 to 14, Block 1	1,275
" 1 to 22, " 2	1,870
" 1 to 13, " 3	1,560
" 16 to 28, " 3	1,560
" 1 to 13, " 4	1,560
" 24 to 36 " 4	1,560
" 1 to 12, " 6	1,320
" 20 to 24 " 6	550

Lands:

Pt. T. L. 6 "D" 1	Sec. 15-14-13, 1.38 acres			490
" " " 6 "B" 2	15	1.48	"	520
" " " 5 Less R/W	15	9.67	"	3,570
" " " 4 "B"	15	8.70	"	3,095
Fcty. Plc. Out Lot 1	15	.24	"	140
Pt. T. L. 9 "B,"	15	.27	"	105
T. L. 15, 600' wide	15	36.35	"	7,645
" " "F," 1	14	2.50	"	525
" " 10,	30	6.90	"	760
" " 11,	30,	6.90	"	760

Statement Showing "Carrier Property"—Continued.

Scott's Bluff County:

Unoccupied right of way from Haig to Neb.-Wyo. State Line:					Assessed valuation, year 1921.
N. E. ¼ N. E. ¼	Sec. 10-22-56	2.50	acres		260
S. E. ¼ N. W. ¼ S. W. ¼	3	29.51	"		2,775
N. E. ¼	4	10.90	"		800
S. W. ¼ S. E. ¼ & N. W. ¼ S. W. ¼	33-23-56	11.40	"		1,010
S. E. ¼ S. W. ¼ & S. W. ¼ S. W. ¼	33	11.70	"		375
Carried Forward					$2,169,452
Brought Forward					$2,169,452
N. E. ¼ & S. E. ¼ N. W. ¼	Sec. 32-23-56	37.40	acres		750
S. W. ¼ N. W. ¼	32	1.00	"		70
N. W. ¼ S. E. ¼; N. E. ¼ N. W. ¼; N. W. ¼ N. W. ¼	32	13.15	"		820
N. E. ¼ N. E. ¼	31	7.60	"		95
S. ½ S. E. ¼ & S. ½ S. W. ¼	30	20.06	"		1,035
S. ½ S. E. ¼ & S ½ S. W. ¼	25-23-57	22.41	"		935
S. ½ S. E. ¼ & S. E. ¼ S. W. ¼	26	12.17	"		115
S. W. ¼ S. W. ¼	26	3.05	"		30
S. ½ S. E. ¼ & S. ½ S. W. ¼	27	20.67	"		255
N. E. ¼ N. W. ¼ & N. W. ¼ N. W. ¼	34	3.59	"		50
S. E. ¼ S. E. ¼ & S. W. ¼ S. E. ¼	28	2.36	"		25
N. ½ N. E. ¼ & N. ½ N. W. ¼	33	26.30	"		590
N. ½ N. E. ¼ & N. ½ N. W. ¼	32	12.12	"		115
N. E. ¼ N. E. ¼ & N. W. ¼ N. E. ¼	31	6.13	"		20
N. ½ N. W. ¼ & S. W. ¼ N. W. ¼	31	8.56	"		5
S. ½ N. E. ¼; N. W. ¼ S. E. ¼; N. ½ S. W. ¼	30-23-58	15.38	"		580
	35	13.08	"		390

N. ½ S. E. ¼ & S. W. ¼	34	18.18	"	605
S. ½ S. W. ¼	34	5.55	"	245
S. ½ S. E. ¼	33	7.65	"	

198 Saunders County:

Yutan:

Lot 11 Frac. Block 22	200
Frac. Lot. 19, " 35	110

Near Mead:

Part S. W. ¼ N. W. ¼ Sec. 36-15-8 6.00 acres	525

Valparaiso, Jensen's Addition:

Lots 2, 3 & 6 Block 17	450
Total Real Estate	$2,177,467

Personal Property.

Douglas County:

	Assessed valuation, year 1922.
Horses & Carts	$200
Autos	2,400
Shop Mach'y & Tools	583,045
Office Furniture & Fixtures	70,000
Mach. & Repair Shop, etc., Storehouse Buildings	1,123,175
	$1,778,820

Statement Showing "Carrier Property"—Continued.

	Assessed valuation, year 1922.
Hall County:	
Shops, Mach'y & C.	$55,870
Shop Buildings	95,000
	$150,870
Total personal property	$1,929,690
Summary.	
Total assessed valuation, real estate	$2,177,467
" " " personal property	1,929,690
Grand Total	$4,107,157
(In lead pencil:) Add 1/3	1,369,052
	$5,476,209

199 *List of Machine Shops, Repair Shops, and Storehouses Belonging to Union Pacific Railroad in the City of Omaha, Douglas County, Nebraska, Situated on the Right of Way and Depot Grounds of said Company as of April 1st, 1922.*

Description.	Size.	Material.	Actual value.
Boiler House	41 x 50	Brick	$500
" " Addition	16 x 16	"	300
Coal bin	18 x 44	Frame	10
Car Shop & Platform	170 x 391	"	12,000
Erecting shop & store room	22 x 391	"	6,000
Store shed	10 x 36	"	50
Hose House	10 x 16	"	25
Blacksmith Shop	13 x 30	"	250
Privy	13 x 30	"	275
Repair shed	10 x 12	"	60
Repair iron platform	13 x 168	"	170
Air brake hose house	22 x 40	"	250
Store house	12 x 38	"	330
Platform	60 x 352	"	1,120
Coal Bin	36 x 110	"	100
Store House	50 x 268	Brick)	
" " Platform		Frame)	44,000
Oil House	50 x 134	Brick)	
Oil House Platform	50 x 300	Frame)	12,000
Repair House	16 x 20	"	75
Paint Shop	20 x 30	Brick	400
Fuse & Torpedo House	20 x 74	"	500
Lumber House	40 x 100	Frame	700
Machine & erecting shop	150 x 395	Brick	100,000

List of Machine Shops, Repair Shops, and Storehouses.—Continued.

Description.	Size.	Material.	Actual value.
Machine & erecting extension	150 x 100	Brick	40,000
" & " "	150 x 200	"	80,000
Pattern shop	50 x 199	"	20,000
Boiler shop	150 x 310	"	80,000
New Power house	76 x 209	"	150,000
2 air compression houses	24 x 24	"	1,500
Generator house & Platform	586 x 16	Frame	4,000
Iron house	43 x 41	"	1,000
Fire engine house	30 x 100	Brick	1,000
Record building	20 x 40	Frame	1,500
Babbit- shop	76 x 90	Brick	1,900
Platform	20 x 42	Frame	80
Coal sheds	14 x 76 & 14 x 57	"	1,100
Platform	14 x 72 & 14 x 232	"	
"	50 x 200	"	700
Office & Lab-ratory	50 x 170	Brick	50,000
Toilet & Locker room	17 x 40	Con. & Brk.	3,000
Blacksmith shop & Platform	90 x 376	Brick	60,000
Gasoline storage house	28 x 50	"	1,500
Iron house	50 x 162	"	12,000
" " office	8 x 12	"	50
Stripping shed	42 x 176	"	12,000
Car shop	342 x 492	"	195,000
Paint & Wheel shop	178 x 302	"	95,000
Glass & Paint store & Add'n	20 x 32	Frame	
Paint & Store House	20 x 47	"	800
Engine platform			

200	Paint store	32 x 62	Brick	6,000
	Coal bin	36 x 252	Frame	700
	Store "A" & Platform (very old)		"	150
	Lime store house & addition	48 x 94	Brick	4,000
	Tool house	36 x 45	Frame	700
	Oil house	18 x 30	Brick	2,000
	Hose repair house	20 x 60	Frame	3,000
	Lumber sheds	20 x 143 & 20 x 142	"	2,600
	Shaving burner	48 x 68	"	10,000
	Pony saw mill	24 x 150		8,000
	Chemical storage house	12 x 20		1,780
	Dry kiln	47 x 58		10,000
	Planing mill	90 x 302		65,000
	Sand blast & Varnish remover			3,000
	Wheel platform, derrick & crane			15,000
	Total			$1,123,175

(End of Exhibit 3.)

201 Q. When you say "not under the jurisdiction of the State Board," Mr. Scribner, you mean that it was not under the jurisdiction of the State Board for assessment purposes?

A. As stated "for railroad assessment purposes," meaning original assessment.

Mr. Magaw: I might state that the exhibits that have been introduced in evidence and what is shown thereby have reference only to the railroads named therein, that is, the St. Joseph & Grand Island and the Union Pacific, and are introduced in evidence on behalf of those railroads and not on behalf of the Burlington and the other parties to this suit.

Mr. Osborne: As a member of the Board I have no objection to this exhibit going into the record for what it is worth, this Exhibit "3," pending an opportunity to substantiate its authenticity, and not confessing that the State Board has not given consideration to the property therein mentioned.

202 Mr. Magaw: That is all for the present.

Mr. Lamaster: I may have a few questions later on.

Mr. Clark: That is on these matters he has just covered?

Mr. Lamaster: Yes.

Mr. Clark: Can you finish that now?

Mr. Lamaster: No, I cannot do it right now, Mr. Clark.

Witness excused temporarily.

Mr. Clark: The Complainants will call Mr. Morgan.

E. F. Morgan called as a witness on behalf of the complainants and after being duly sworn testified as follows:

Examined by Mr. Clark:

Q. Give your name and business.

A. E. F. Morgan, Assistant Auditor of the Chicago, Burlington & Quincy Railroad Company, Chicago.

Q. Mr. Morgan, are you acquainted with the books and records and data of the Chicago, Burlington & Quincy Railroad Company from which Forms G and 9 are made?

A. Yes sir.

Q. And were they made under your supervision as originally filed, if that is the fact?

203 A. I made them personally and for the signature of the Comptroller.

Mr. Clark: Now, you want the originals offered, Mr. Osborne?

Mr. Osborne: Yes.

Mr. Clark: To keep the record continuous the complainant railroad admits that Exhibit "5" would be Form "G" filed with the State Tax Commission for the year ending December 31, 1921. What date was it filed?

Mr. Osborne: You mean the original?

Mr. Clark: Yes.

Mr. Osborne: I think that may be supplied.

Mr. Clark: And filed on the — day of ——, 1922. And Exhibit "6" a statement on Form 9 for the year ending December 31, 1921, filed with the Tax Commissioner on the — day of April, 1922, and are exhibits on behalf of the State.

Mr. Osborne: Yes.

Which said documents, marked Exhibits "5" and "6," so offered and received in evidence, are in the words and figures as follows:

204 **Exhibit "5" to Morgan's Testimony.**

Form G.

Statement Showing Mileage, Capital Stock, Earnings, and Operating Expenses of the Chicago, Burlington & Quincy R. R. Co. for the Year Ending December 31, 1921.

Mileage in Nebraska—Total Operated Mileage..	2,906.02
Capital Stock (system).....	$170,839,100.00
Gross Earnings in Nebraska.....	41,160,307.23
Passenger	7,818,276.07
Freight	30,044,617.32
Other Sources	3,297,413.84
Operating Expenses for Nebraska, including Taxes, Maintenance, and renewals, excluding additions and betterments:	
Operating Expenses.....	25,213,372.34
Taxes	2,207,533.85
	27,420,906.19
Net Earnings in Nebraska.....	13,739,401 04
Earnings per Mile, Gross.....	14,163.81
Earnings per mile, net.....	4,727.91
Interest on Debt (system).....	6,807,134.36
Cash	44,925,917.00
Dividends Made (system) Stock.....	60,000,000.00

I, H. W. Johnson, Comptroller, of the Chicago, Burlington & Quincy Railroad Co., do solemnly swear that the above statement is true and correct to the best of my knowledge and belief. (Signed) H. W. Johnson, Comptroller.

205 Subscribed in my presence and sworn to before me this 7th day of April, A. D. 1922. (Signed) Henry Lunde, Notary Public. (Seal.)

NOTE.—The above statement should be sworn to by the President Secretary or Treasurer of the Company and should be made to the Auditor of State during the month of January. (See Section 8 Chapter 16, Compiled Statutes of Nebraska, 1887.)

206 **Exhibit "6" to Morgan's Testimony.**

Statement Showing the Total Gross and Net Earnings of the Chicago, Burlington & Quincy R. R. Co. for the Year Ending December 31, 1921.

Total gross Earnings during the year for which made in Nebraska	$41,160,307.2
Total net earnings during the year for which made in Nebraska	13,739,401.0
Total amount expended in operation or maintenance of the property and the improvements thereof..	(see note.
Amount of same expended in improvements or betterments	(see note.
Amount expended in maintenance or operation (including taxes) in Nebraska	27,420,906.1
Dividend last declared on shares of stock System, per cent 20%, Amt.	34,167,380.0

Date, Number and amount of all dividends declared on this stoc during the year next preceding the date of this report: Date-, Marc 25, 1921; March 31, 1921; June 25, 1921; Dec. 27, 1921. Numbe 4. Amount, $44,925,917.00 cash; 60,000,000.00 stock.

NOTE.—Impossible to answer these two questions at this time all records of cost of additions and betterments for the year 192 were destroyed in the General office Building fire of March 15t 1922.

207 I, H. W. Johnson, Comptroller of the Chicago, Burlingto & Quincy R. R. Co. do solemnly swear that the above stat ment is true to the best of my knowledge and belief. (Signed H. W. Johnson, Comptroller.

Subscribed in my presence and sworn to before me this 7th day April, 1922. (Signed) Henry Lunde, Notary Public. (Seal.)

Q. Now, Mr. Morgan, did you afterwards, subsequent to the filin of Forms G and 9, discover any erro-s therein?

A. Yes sir, I did.

Q. About when did you first discover such errors?

A. It was about a week ago.

Q. And in what did such errors consist?

A. The operating expenses as shown on the original statemen were understated.

Q. How did the error occur, if you know, in the original
208 statement?

A. As you probably know we had a very disastrous fire in the General Office Building on the night of March 14th, and a great many records were destroyed, and at the time the original statement was made out shortly after this fire, I called upon the Auditor of Expenditures' office to furnish me with a statement of the operation expenses in Nebraska; they had not completed their entire analysis of the operating expenses by States but they gave me these Nebraska figures and I used the figures that they furnished me at that time in compiling these two statements. About a week or ten days ago I had occasion to look over this report and I was rather curious as I could not understand why the net revenue in Nebraska was so much higher than it ordinarily would be, and upon comparing it with the actual figures for all states which the Auditor of Expenditures' office had compiled after we made out these original statements I found a discrepancy of approximately three million dollars in the figures. On taking this up with the Auditor as to why the figures originally furnished were so much lower, their
209 investigation developed that in arriving at the figures they furnished me they inadvertently left out all the general expenses, all the traffic expenses and all the expenses of trainmen,—how this happened they could not explain; it was just a human error and they had nothing to balance to at that time.

Q. Have you made an amended statement now?

A. I have and that includes two other changes.

Q. What are they?

A. In the statement first filed the taxes shown on that statement were merely the Nebraska State taxes and did not include any proportion of the Federal taxes, United States Government taxes, properly assignable to Nebraska. Neither did the operating expenses include anything to represent the amounts paid for joint facilities in the State of Nebraska, nor for the Nebraska proportion of the net amount paid for rented equipment.

Q. These statements, as compiled, do they come within the terms of "net operating income," meaning railway operating income, including in the computation thereof debits and credits arising from equipment rents and joint facility rents, as provided in Sec-
210 tion 8583-A of the Transportation Act of February 28, 1920?

A. As amended the figures show the net earnings for Nebraska are comparable with that net railway operating income as defined in the Act.

Q. The Statement that you have made applies to the amended Form G and Form 9, does it?

A. Yes sir, for the year 1921.

Mr. Clark: We will offer in evidence as Exhibits "7" and "8," these documents, and ask leave to substitute the copies which the witness has and leave these originals with the Tax Commissioner for his file.

Mr. Osborne: I would not care to substitu-e them I will file them for what they are worth.

Mr. Clark: I am making an offer of evidence, are the exhibits received?

Mr. Osborne: Yes, they are both in the record, are they not?

Mr. Clark: Very well.

Exhibits "7" and "8" returned herewith are as follows:

211 **Exhibit "7" to Morgan's Testimony.**

Form G.

Amended Statement Showing Mileage, Capital Stock, Earnings, and Operating Expenses of the Chicago, Burlington & Quincy R. R. Co. for the Year Ending December 31, 1921.

Mileage in Nebraska	2,906.02
Capital Stock	$170,839,100.00
Gross Earnings in Nebraska	41,160,307.23
Passenger	7,818,276.07
Freight	30,044,617.32
Other Sources	3,297,413.04
Operating Expenses for Nebraska including Taxes, Maintenances, Repairs and Renewals, excluding Additions and betterments	31,289,319.87
Net Earnings in Nebraska	9,870,987.36
Earnings per mile, gross	14,163.81
Earnings per Mile, net	3,396.74
Interest on debt	6,807,134.56
Dividends made:	
Cash	44,925,917.00
Stock	60,000,000.00

I, E. F. Morgan, Assistant Auditor of the Chicago Burlington & Quincy R. R. Co., do solemnly swear that the above statement is true and correct to the best of my knowledge and belief. (Signed) E. F. Morgan, Assistant Auditor.

Subscribed in my presence and sworn to before me this 25th day of July A. D. 1922. (Signed) Hazel Nigh, Notary Public. (Seal)

*Operating Expenses	$28,209,414.[illegible]
Nebraska taxes	2,207,533.[illegible]
U. S. Taxes	654,978.[illegible]
Hire of Equipment	125,229.[illegible]
Jt. Facility Rents	92,163.[illegible]
	$31,289,319.[illegible]

212 Form No. 9.

Copy of Exhibit "8."

Amended Statement Showing the Total Gross and Net Earnings of the Chicago, Burlington & Quincy R. R. Co. for the Year Ending March 31, 19—.

Total gross earnings during the year for which made in Nebraska	$14,160,307.25
Total net earnings during the year for which made.	9,870,987.36
Total Amount expended in operation or maintenance of the property and the improvements thereof	See note.
Amount of same expended in improvements or betterment	See note.
Amount expended in maintenance or operation including Taxes (In Nebraska)	31,269,319.27
Dividend last declared on shares of stock System per cent 20% amount	24,167,380.00

Date, number, and amount of all dividends declared on this stock during the year next preceding the date of this report: Date-: Mch. 25, 1921; Mch. 31, 1921; June 25, 1921; Dec. 27, 1921. Number, 4(?). Amt, $44,925,917.00, *cost;* $60,000,000.00, Stock.

Note.—Impossible to answer these questions at this time as all records of cost of additions and betterments for the year 1921 were destroyed in the General Office Building fire of March 15, 1922.

I, E. F. Morgan, Assistant Auditor of the Chicago, Burlington & Quincy R. R. Co. do solemnly swear that the above statement is true to the best of my knowledge and belief. (Signed) E. F. Morgan, Assistant Auditor.

Subscribed in my presence and sworn to before me this 25th day of July, 1922. (Signed) Hazel High, Notary Public. (Seal.)

213 Mr. Lamaster: You mean these originals shall be left in the office of the Tax Commissioner and you substitute copies for the record?

Mr. Clark: I am offering the originals and ask leave to substitute copies and leave the originals with the Tax Commissioner.

Q. Have you made a further statement from the records showing the net earnings for the years 1917 to 1921 inclusive?

A. I have.

Q. From what is that statement compiled?

A. Form G which has been filed with the State for each of the years in question. There was not deducted from the net earnings in Nebraska any proportion of U. S. Government taxes, nor the

Nebraska proportion of hire of equipment or joint facility rents. The affidavit shows what the net earnings in Nebraska would have been had these amounts been deducted.

Mr. Clark: We offer in evidence Exhibit "9," just identified by the witness.

Which said document, Exhibit "9," so offered and received in evidence, is in the words and figures as follows:

214 *Copy of Exhibit "9."*

Omaha, Nebraska, July 25th, 1922.

Statements, Form G, sworn to by the comptroller of this Company have been filed annually with the Auditor of State, State of Nebraska, which have shown the "Net Earnings in Nebraska" of the Chicago, Burlington & Quincy Railroad Company for the five year period ended December 31, 1921, as follows:

1917	$9,530,535.4
1918	8,320,696.7
1919	8,578,058.7
1920	3,390,921.4
1921	10,088,381.0

The figures shown above for the years 1917 to 1920 inclusive are the Operating Revenues for each year less the Operating Expenses and State Taxes, with nothing deducted for the proportion of United States Government taxes properly assignable to the State of Nebraska, nor for Hire of Equipment or Joint Facility Rents. The proportion of United States Government taxes has been deducted in arriving at the figures shown for the year 1921.

After deducting the Nebraska proportion of United States Government taxes assignable to Nebraska for each year 1917 to 1920 inclusive, and the Hire of Equipment and Joint Facility Rents
215 for all years, the "Net Earnings in Nebraska" for the 5 year period ended December 31, 1921, would be:

1917	$8,559,773.4
1918	7,185,038.7
1919	7,336,038.7
1920	1,960,994.4
1921	9,870,987.0
Average	$6,982,743.6

I, E. F. Morgan, Assistant Auditor of the Chicago, Burlington & Quincy Railroad Company, do solemnly swear that the above statement is true and correct to the best of my knowledge and belief.

E. F. Morgan, Assistant Auditor.

STATE OF NEBRASKA,
County of Lancaster:

Subscribed in my presence and sworn to before me this 25th day of July, 1922. Hazel Nigh, Notary Public. (Seal.)

216 Q. Why do you select the five year period, Mr. Morgan?
A. One reason is this: The Bureau of Internal Revenue of the Federal Government, in one of the exhibits, r-quired in the capital stock tax return, which they use as a factor in determining the value of the capital stock of any corporation, they require each corporation to show in a tabulation, the net income for the five years previous, and also an average of those five years.
Q. And you have simply used that as the standard in this exhibit?
A. Yes sir.

Mr. Clark: That is all with this witness on behalf of the Burlington.
Mr. Osborne: Have you any questions?
Mr. Lamaster: There probably will be later on.

Witness excused temporarily.

217 Mr. Magaw: I have another question of Mr. Scribner.

A. W. SCRIBNER, a witness heretofore called and duly sworn on behalf of the Complainants, was recalled and testified as follows:

Examined by Mr. Magaw:

Q. Mr. Scribner, referring to your direct examination about the statements on Form G, filed with the Commission, did you also file with the Tax Commissioner, for the Union Pacific Railroad Company, a statement known as Form 9?
A. Yes sir.

Mr. Magaw: We would like to have it stipulated that the reporter can copy Form 9 into the record and we now offer it in evidence.

Mr. Osborne: No objection.

Which said document, so offered and received in evidence, is in the words and figures as follows:

218 **Form 9.**

Entire Gross Earnings of the Union Pacific Railroad Company R. R. Co.

From Operation for the whole system.....	$114,783,970.55
Income from operation.....	30,759,313.43
Income	17,009,612.70
Gross Earnings in Nebraska from Operation....	43,119,988.61
Income from operation in Nebraska.....	12,850,355.67
Income from other sources in Nebraska.....	Cannot state.

Income Account, Calendar Year 1921.

Operating Income:		
Railway Operating Revenues		114,783,970.3
Railway Operating Expenses		77,612,030.1
Net Revenue from Railway Operations		37,171,940.4
Railway Tax Accruals	6,394,853.49	
Uncollectible Railway Revenues	17,773.53	
		6,412,627.0
Railway Operating Income		30,759,313.4
Revenues from Miscellaneous Operations	49,574.14	
Expenses of Miscellaneous Operations	6,016.15	
Net Revenues from Miscellaneous Operations		43,557.9
Taxes on Miscellaneous Operating Property		34,682.1
Miscellaneous Operating Income		8,875.7
Total Operating Income		30,768,189.1
Non-operating Income:		
Hire of Equipment	669,973.80	
Joint Facility Rent Income	635,433.63	
Income from Lease of Road	19,624.52	
Miscellaneous Rent Income	159,116.00	
Miscellaneous Non-operating Physical property	119.67	
Separately Operated Property-Profit	51,092.51	
Dividends on Stock Owned	6,844,342.00	
Income on Funded Securities	7,850,394.72	
Income on Unfunded Securities and Accounts	747,919.07	
Miscellaneous Income	31,836.12	
Total Non-operating Income		17,009,612.
Gross Income		47,777,801.

219 Deductions from Gross Income:

Hire of Equipment	3,334,258.96	
Joint Facility Rent	378,552.23	
Miscellaneous Rents	1,793.00	
Miscellaneous Tax Accruals	4,528.06	
Interest on Funded Debt	9,605,940.20	
Interest on Unfunded Debt	45,660.08	
Miscellaneous Income Charges	99,544.83	
Total Deductions from Gross Income		13,470,277.36
Net Income		34,307,524.50
Dividends paid during the year:		
4% on Preferred Stock	3,981,740.00	
10% on Common Stock	22,229,160.00	
Income Balance Transferred to Credit of Profit and Loss		8,096,624.50

Entire Gross Earnings of Such Railroads Company in Nebraska for Each and Every Month for the Last Calendar Year Ending the 31st Day of December.

January	$3,052,613.25
February	2,550,178.96
March	3,210,248.38
April	3,016,777.56
May	2,963,935.93
June	3,243,780.31
July	3,499,143.77
August	4,616,021.31
September	4,871,221.16
October	5,307,770.07
November	3,596,176.15
December	3,192,121.76
Total	$43,119,998.61

220 Q. Did you afterwards file a revised statement on Form 9 with the Tax Commissioner?

A. Yes sir.

Q. For the Union Pacific?

A. Yes sir.

Mr. Magaw: We would like to have it stipulated that the revised statement on Form 9 can be introduced in evidence and supplied by the reporter.

Mr. Osborne: No objection.

Which said document, so offered and received in evidence, is in the words and figures as follows:

221 **Revised Statement on Form "9."**

Entire Gross Earnings of the Union Pacific Railroad Company.

	R. R. Co.
From operation for the whole system	$114,783,970
Income from operation	30,768,189
Income	17,609,612
Gross earnings in Nebraska from operations	43,119,988
Income from operation in Nebraska	10,481,151
Income from other sources in Nebraska	Cannot state

Income Account, Calendar Year 1921.

Operating Income:		
Railway Operating Revenues		114,783,970
Railway Operating Expenses		77,612,030
Net Revenue from Railway Operations		37,171,940
Railway Tax Accruals	6,394,853.49	
Uncollectible Railway Revenues	17,773.53	
		6,412,627
Railway Operating Income		30,759,313
Revenues from Miscellaneous Operations	49,574.14	
Expenses of Miscellaneous Operations	6,016.15	
Net Revenue from Miscellaneous Operations		43,557
Taxes on Miscellaneous Operating Property		34,682
Miscellaneous Operating Income		8,573
Total Operating Income		30,768,189
Non-operating Income:		
Hire of Equipment	669,973.80	
Joint Facility Rent Income	635,433.63	
Income from Lease of Road	19,624.52	
Miscellaneous Rent Income	159,116.00	
Miscellaneous Non-operating Physical property	119.67	

Separately Operated Property-Profit	51,092.51	
Dividends on Stock Owned	6,844,342.00	
Income from Funded Securities	7,850,394.72	
Income from Unfunded Securities and Accounts	747,919.07	
Miscellaneous Income	31,836.12	
Total Non-operating Income		17,009,612.70
Gross Income		47,777,801.86
222 Deductions from Gross Income:		
Hire of Equipment	3,334,258.96	
Joint Facility Rents	378,552.23	
Miscellaneous Rents	1,793.00	
Miscellaneous Tax Accruals	4,528.06	
Interest on Funded Debt	9,605,940.20	
Interest on Unfunded Debt	45,660.03	
Miscellaneous Income Charges	99,544.83	
Total Deductions from Gross Income		13,470,277.36
Net Income		34,307,524.50
Dividends Paid during the year:		
4% on Preferred Stock	3,981,740.00	
10% on Common Stock	22,229,160.00	
Income Balance Transferred to Credit of Profit and Loss		8,096,624.50

Entire Gross Earnings of Such Railroad Company in Nebraska for Each and Every Month for the Calendar Year Ending the 31st Day of December.

January	$3,052,613.25
February	2,550,178.96
March	3,210,248.38
April	3,016,777.56
May	2,963,935.93
June	3,243,780.31
July	3,499,143.77
August	4,616,021.31
September	4,871,221.16
October	5,307,770.07
November	3,596,176.15
December	3,192,121.76
Total	$43,119,988.61

223 Q. Did you file a statement, Form 9, for the St. Joseph & Grand Island Railway Company?

A. Yes sir, this morning.

Q. Is this Exhibit "10" a copy of that statement?

A. It is.

Q. I show you the statement marked Exhibit "10," and ask you whether that is a correct copy of the original statement, Form 9, filed with the Tax Commissioner for the St. Joseph & Grand Island Railway Company?

A. Of the original revised statement of Form 9, yes sir.

Mr. Magaw: We now offer this Exhibit "10" in evidence.

Which said document, marked Exhibit "10," so offered and received in evidence is in the words and figures as follows:

224 **Exhibit "10" to Scribner's Testimony.**

Entire Gross Earnings of the St. Joseph and Grand Island Railway Company. R. R. Co.

From operation for the whole system	$3,419,345.
Income from operation	141,069.
Income from other sources	.....
Gross earnings in Nebraska from operation	1,769,971.
Income from operation in Nebraska	218,817.
Income from other sources in Nebraska	.....

Distribution Made of Such Income.

Entire Gross Earnings of Such Railroad Company in Nebraska for Each and Every Month for the Last Calendar Year, Ending the 31st Day of December.

January	$131,478.
February	122,514.
March	132,216.
April	131,576.
May	125,087.
June	123,626.
July	145,947.
August	150,264.
September	190,552.
October	238,339.
November	142,638.
December	135,728.

225 Q. Had you filed an original statement, for the St. Joseph & Grand Island Railway Company, or is this the only one filed?

A. We had filed an original statement, yes sir.

Mr. Magaw: I would like to have it stipulated that the original statement filed with the Tax Commissioner, Form 9, can be received in evidence, and the reporter make a copy thereof from the original.

Mr. Osborne: No objection.

Which document, so offered and received in evidence, is in words and figures as follows:

226 **Original Statement Form "9."**

Entire Gross Earnings of the St. Joseph and Grand Island Railway Co.

From operating for the whole system	$3,355,356.87
Income from operation	69,559.13
Income	
Gross earnings in Nebraska from operation	$1,739,941.61
Income from operation in Nebraska	212,526.80
Income from other sources in Nebraska	

Distribution Made of Such Income.

Entire Gross Earning of Such Railroad Company in Nebraska for Each and Every Month for the Last Calendar Year, Ending the 31st Day of December.

January	$129,666.60
February	120,754.33
March	130,455.53
April	129,691.74
May	123,224.70
June	121,852.02
July	144,046.21
August	148,413.36
September	188,555.93
October	236,478.83
November	140,226.63
December	126,575.73

227 R. D. POLLARD, called as a witness on behalf of the complainants, and after being duly sworn testified as follows:

Examined by Mr. Clark:

Q. Mr. Pollard what is your position with the Chicago, Burlington & Quincy Railroad Company, the complainant?

A. Tax Agent.

Q. In charge of Nebraska?

A. Yes sir.

Q. Have you prepared a statement of property locally assessed which is not within the jurisdiction of this Board for assessment purposes?

A. Yes sir.

Q. For original assessment purposes?

A. Yes sir.
Q. Have you that statement there?
A. Yes sir.
Q. Have you more than one copy of it?
A. No sir, but I can make one soon. It is very short.
Q. Then just read it into the record, will you?
A. "Plattsmouth shop buildings, $161,502.00. Plattsmouth shop tools and machinery, $69,700.00. Havelock shop buildings, $751,920.00. Havelock shop tools and machinery—and I think there is a mule or an auto there besides—that is $364,515.00. McCook tools and machinery, $30,000.00. Burnham shop yards buildings, $32,754.00. Feed, horses, mules and so forth at Burnham, $6,465.00. Omaha office furniture in headquarters and city ticket office, $10,705.00. Omaha headquarters land and building, $137,
228 000.00. A total of $1,564,861.00.

Q. That is offered for the purpose of applying it to the ascertainment of net operating income of the Burlington?
A. Yes sir.
Q. For the year 1921?
A. Yes sir.

Mr. Clark: That is all. On behalf of the Burlington I wish to state that the evidence of *of* Mr. Morgan and Mr. Pollard, together with such cross examination as may be made on their evidence to this time, is offered for the exclusive use of the Burlington in ascertaining its net return.

Cross-examination.

By Mr. Lamaster:

Q. May I ask you, Mr. Pollard: What is the force of these figures? I don't quite get it.
A. Under the statu-es of this state certain property that is used in the operation of the road is assessed by the County Assessor; for instance, our shops at Havelock, our shops at Plattsmouth, and the headquarters at Omaha; they are used in the operation of the road and assessed by the assessors of the counties.
Q. Are these included in your former figures?

Mr. Clark: The next exhibit I will offer will show you the why of this.

Mr. Lamaster: All right.
229 Mr. Clark: The record to date does not disclose.

Witness excused.

A. W. Scribner, a witness heretofore and duly sworn on behalf of complainants, was recalled and testified as follows:

Examined by Mr. Clark:

Q. Mr. Scribner, you are still with the Union Pacific?
A. Yes sir.

Q. You may look at Exhibit "4" and state how you secured it, from whom, and the use to which it is applied, if any.

A. This is a statement sent to me by Mr. Osborne, State Tax Commissioner, headed "Formula used by State Board of Equalization in determining railroad values for 1922 in Nebraska."

(Cross-examination, A. W. Scribner:)

Mr. Clark: We now offer in evidence Exhibit "4" in behalf of each of the railroads complaining here, so far as it is applicable to each of them.

Mr. Osborne: I will say that I have no objection as a member of this Board for the formula going into the record, but the resolution itself adopted by the Board is the best evidence in determining the method employed by the Board in fixing the value of the railroads. You are stealing my thunder, Mr. Clark.

230 (Direct examination, A. W. Scribner:)

Mr. Clark: It is a matter of public record, isn't it?

Mr. Osborne: It is not a public record. The exhibit itself is not a matter of record in any department of the State.

Which said document, marked Exhibit "4," so offered and received in evidence, is in the words and figures as follows:

231 **Exhibit "4" to Scribner's Testimony.**

Formula Used by State Board of Equalization in Determining Railroad Values for 1922 in Nebraska.

C., B. & Q.

Net earnings in Nebraska	$13,739,401.04
Assessment for 1921 as fixed by State Board	131,755,725.00
6% of which is	7,905,343.50
This deduction from net earnings leaves	5,834,057.54
Added to $131,755,725 gives	137,589,782.00

Or total assessment for 1922.

Union Pacific.

Net earnings in Nebraska	$12,850,355.67
Assessment for 1921 as fixed by State Board	90,861,120.00
6% of which is	5,861,667.20
This deduction from net earnings leaves	7,398,688.47
Added to $90,861,120.00 leaves	98,259,808.00

Or total assessment for 1922.

M. & O.

Net earnings in Nebraska	$483,701.17 deficit.
Assessment for 1921 as fixed by State Board	13,698,855.00
6% of which is	821,931.30
This added to deficit gives	1,305,632.47
This deducted from assessment gives	12,393,223.00
Or assessment for 1922.	

Rock Island.

Net earnings in Nebraska	$118,480.83 deficit.
Assessment for 1921 as fixed by State Board	11,502,985.00
6% of which is	690,179.10
This added to deficit gives	808,659.93
This deducted from $11,502,985 gives	10,694,326.00
Or assessment for 1922.	

Missouri Pacific.

Net earnings in Nebraska	$441,747.68 deficit.
Assessment	12,806,341.00
6% of which is	768,380.46
This added to deficit gives	1,210,128.14
This deducted from $12,806,341 gives	11,596,213.00
Or assessment for 1922.	

St. J. & G. I. R. R.

Net earnings in Nebraska	$318,531.00
Assessment for 1921 as fixed by State Board	3,971,895.00
6% of which is	238,313.00
This deducted from net earnings gives	80,218.00
Added to 1921 assessment gives	4,052,113.00

232 Mr. Clark: Now we offer in evidence Exhibit "11" subject to comparison, this being the resolution adopted by the Board fixing our values, and so forth.

Mr. Osborne: Yes.

Which said document, marked Exhibit "11," so offered and received in evidence, is in words and figures as follows:

233 **Exhibit "11" to Scribner's Testimony.**

Office of the Governor, Lincoln, Nebraska.

June 15th, 1922

The State Board of Equalization reconvened at the office of the Governor at 10:30 a. m., all members present, the Governor in his chair.

The question of railroad values for the year 1922 was then discussed by the Board, and the following resolution was unanimously adopted;

Resolved: That we, the State Board of Equalization and assessment, in regular session held for the purpose of valuing and assessing the railroads in the State of Nebraska, for the purpose of taxation of their property in the said state, and having given due and full consideration to the returns furnished said Board by the several railroad companies, and having taken into consideration the main track, side track, spur track, ware-house track, road bed, right of way and depot grounds, and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand, and supplies, monies, credits, franchises, and all other property of said railroad companies, and having taken into consideration the gross and net earnings of the said railroad, the total amount expended in operation and maintenance, the dividends paid, the capital stock of each system or road, and the market value thereof, and the total amount of secured and unsecured indebtedness, and from all the information we are able to obtain, do hereby ascertain, appraise, fix and assess for the purpose of general taxation, the full actual value of the property of each of the several systems or companies in the State of Nebraska, as hereinafter recite-.

234 Railroad.	Miles of track.	Total actual valuation.
Chicago, Burlington & Quincy	2,861.60	$137,589,782.00
Union Pacific	1,225.135	98,259,808.00
Chicago & Northwestern	1,062.56	.....
Chicago & St. Paul, Minneapolis & Omaha	303.005	12,392,905.00
Chicago, Rock Island & Pacific	245.51	10,694,409.00
Missouri Pacific	347.88	11,596,281.00
Kansas City & Northwestern	20.65	487,855.00
St. Joe & G. I.	112.63	4,052,427.00
Mason City & Ft. Dodge	.....	540,000.00
Omaha Lincoln R. R. & Light Co.	6.63	99,450.00
Omaha Bridge and Terminal R. R.	1.31	648,000.00
Omaha Lincoln and Beatrice R. R.	6.12	91,800.00
Omaha & outhern Interurban R. R.	6.00	90,000.00
Illinois Central	.....	54,000.00
Wabash Railway	.....	54,000.00
Chicago, Milwaukee & St. Paul R. R.	.....	108,000.00
Atchinson, Topeka & Sante Fe	.....	15,000.00
North Platte Railway Co.	31.12	376,552.00

The valuations of railroads as fixed and assessed as above set forth, were distributed and apportioned between the main lines, and branches of the several railroad companies, and the value per mile and the total valuation of each line was fixed as shown in the following table:

Railroad and branches. Chicago, Burlington & Quincy:	Miles of track.	Actual valuation, per mile.	Total actual valuation.
Ashland to Schuyler	49.71	$34,820	$1,730,902
Ashland to South Sioux City	103.07	40,460	4,170,212
Aurora to Lester	64.06	29,185	1,869,591
Aurora to Palmer	35.10	32,000	1,123,200
Crete to Wymore	42.78	46,100	1,972,158
Colorado State line to Alliance	86.69	29,185	2,530,048
Culbertson Jt. to Imperial	49.17	23,545	1,157,708
Dewitt to Holdredge Junction	136.46	39,330	5,366,972
Edgar to Superior	26.54	23,545	624,884
Fairmont to Chester	45.16	29,180	1,317,769
Ft. Crook line	4.47	23,550	105,268
Greeley Center to Erickson	18.32	23,545	431,344
Holdredge Jt. to Colorado State Line via Curtis	161.43	40,460	6,531,458
Kenesaw to Kearney	24.19	29,185	705,985
Lincoln to Cobb Junction	7.23	29,180	210,971
Lincoln to Columbus via Germantown	69.67	38,770	2,701,106
McCool Jt. to K. C. & O. Jt.	43.74	29,180	1,276,333
Nebraska City to Lincoln	57.61	40,460	2,330,901
Nebraska City to Salem	46.77	29,180	1,364,749
Nemaha City to Beatrice	64.78	29,180	1,890,280
Northport to Wyoming St. Line	54.19	29,180	1,581,264
Odell Jt. to Kansas State Line	6.04	29,180	176,247
Oreapolis to Ashland via Omaha	47.71	91,210	4,351,629

235 Railroad and branches.	Miles of track.	Actual valuation, per mile.	Total actual valuation.
Orleans Jt. to Kansas St. Line	59.61	$29,180	$1,739,420
Palmer to Burwell	69.03	32,000	2,208,960
Palmer to Sargent	73.29	32,000	2,345,280
Plattsmouth to Colo. St. Line	346.22	91,215	33,222,327
Republican City Jt. to Kansas State Line	8.50	23,550	200,175
Rulo to Oxford Jt. voa Red Cloud	235.66	60,200	14,186,732
So. Sioux City to O'Neill	128.14	29,180	3,739,125
Rulo to Kansas State Line	8.19	29,180	238,984
Stromsburg to Alma	149.13	29,180	4,351,613
Table Rock to So. Dakota State Line via Milford	508.89	58,510	29,775,154
Chalco to Yutan	12.05	5,065	61,033
Total	.....	2,861,60	137,589,782
Union Pacific Railroad:			
Union Pacific Main Line	456.39	$133,155	$60,770,611
Summitt to Lane	20.50	127,305	2,609,753
O. R. & V. Branches	428.195	55,465	23,749,836
Kearney Branches	102.66	40,170	4,123,852
Central City Branches	22.03	38,755	853,773
North Platte Branch	168.01	30,675	5,153,707
Hastings & N. W.	27.35	36,500	998,276
	1,225.135	.....	98,259,782
Chicago & Northwestern	1,062.56		
Chicago, St. Paul, Minneapolis & Omaha	303.005	40,900	12,392,965

Rock Island:			
Rock Island Main Line	124.22	51,055	6,342,052
St. Joe Branch	69.79	39,510	2,757,402
Nelson Branch	51.50	30,970	1,594,955
	245.51	.....	10,694,409
Missouri Pacific:			
Kansas Line to Gilmore Jt.	92.90	40,215	3,707,823
Auburn to Webster	81.04	36,795	2,981,867
Lincoln Branch	45.20	36,795	1,663,360
Talmage to Crete	58.18	30,440	1,770,999
Kansas State Line to Prosser	71.26	20,660	1,472,232
	347.88	.....	11,596,281
236			
Kansas City & Northwestern	20.65	23,625	487,855
St. Joe & G. I.	.....	.....	.....
K. S. L. to G. L.	112.63	35,980	4,052,427
Mason City & Ft. Dodge	.....	.....	540,000
Omaha Lincoln R. R. & Light Co.	6.63	15,000	99,450
Omaha Bridge & Terminal R. R.	1.31	.....	648,000
Omaha & Southern Interurban R. R.	6.00	15,000	91,800
Omah- Lincoln & Beatrice R. R.	6.12	15,000	90,000
Illinois Central	.....	.....	54,000
Wabash Railway	.....	.....	54,000
Chicago Milwaukee & St. Paul R. R.	.....	.....	108,000
Atchinson, Topeka & Santa Fe	.....	.....	15,000
North Platte Railway Company	31.12	12,100	376,552

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LARGE

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These statements are all consolidated and tabulated in this statement, Exhibit "14."

Q. What was the minimum acreage taken?

A. Usually forty acres, for the reason that smaller descriptions were ha-d to get and hard to find the assessed value of, small irregular descriptions.

Q. State to the Commission if that exhibit is a correct statement of all the data assembled in the manner which you have stated?

A. It is.

Mr. Clark: Complainants offer in evidence Exhibit "14."

Which said document, marked Exhibit "14," so offered and received in evidence, is in the words and figures as follows:

(Here follows Exhibit 14 to Scribner's Testimony, marked side folio page 249.)

250 Mr. Clark: That is all. Do you wish to ask him anything?

Mr. Lamaster: Yes, I want to ask Mr. Scribner a few questions.

Mr. Clark: Could I ask you, in your cross examinaton, if it covers the exhibits or evidence introduced for all the roads or that which only applies to the U. P., I wish you would segregate the two for the record, if you can.

Mr. Lamaster: I don't know as I could do that, Mr. Clark. I will be glad to do so if I can.

Cross-examination.

By Mr. Lamaster:

Q. Some mention was made this forenoon of taxes, Mr. Scribner, and in your statement, Form G, I notice the taxes are put at $2,609,-002.63.

A. Yes sir.

Q. Now, what kind of taxes does that include?

A. That includes State, County, School District, all local regular taxes, not special assessments. All regular taxes, State and local and the Federal taxes.

Q. What Federal taxes did you include?

A. They would be Federal income taxes and Federal capital stock taxes.

251 Q. Why did you include Federal income taxes?

A. Because they are a charge against income such as the State tax.

Q. Did you call attention to any section of the statute authorizing the deduction of Federal income taxes?

A. The blank itself says operating Expenses for Nebraska, including Taxes," and this is all taxes, of course, except special assess-

It was agreed by the Board that the fixing of the value of the Chicago and Northwestern Railroad Company be deferred until such time as the State Tax Commissioner desired to bring it again to the attention of the State Board. After, which the Board adjourned subject to the call of the State Tax Commissioner.

STATE OF NEBRASKA,
Lancaster County, ss:

It is hereby certified that the foregoing is a true and a correct copy of the record of the State Board of Equalization and Assessment, in so far as such record has to do with the fixed valuation of railroads for the year 1922.

In witness whereof: I hereunto set my hand and the seal of said State Board of Equalization and Assessment, this twenty-first day of June 1922. W. H. Osborne, State Tax Commissioner. WHO/H.

237 Mr. Clark: The complainants each now offer in evidence Exhibit "12," together with all certificates, endorsements and seals thereon, same being the bill of exceptions and transcript of record certified as of August 10th, 1921, being the hearing of this year before the State Board of Equalization and Assessment of the State of Nebraska. Now, I have a copy of the bill of exceptions here which I would like to substitute for the original and leave the original with the Board.

Mr. Osborne: Yes, if it has any bearing on the case.

Mr. Clark: Then the original is received and the copy substituted?

Mr. Osborne: Yes.

Which said bill of exceptions, marked Exhibit "12," so offered and received in evidence, is in the words and figures as follows:

(Said Ex. "12," because of its bulk, is attached hereto separately immediately following page 219 hereof.)

238 Q. Mr. Scribner, did you have data assembled showing lands mortgages in certain counties of Nebraska and parts of counties in the State?

A. Yes sir.

Q. And did you get assembled the valuation placed upon the different pieces of property by the Laon Companies and owners?

A. Yes sir.

Q. You may look at Exhibit "13" and state to the Board in manner in which the data from which this exhibit was made and how it was assembles and worked out?

A. In the first instance we sent out to all the counties which we could reach and secured lists of mortgages of lands made by loan and trust companies dated between March, 1920 and March 192- we then had the loan companies makin- these mortgages furnish the record of the owner's statement as to the value of the mortgaged lands in each instance; also the appraised value as fixed by

loan companies on the same land; then we secured from the county records the assessed valuation of each of these mortgaged appraisals for the year- 1921 and 1922. After assembling all the information so secured the result was tabulated into this statement showing by counties, the information under the headings as shown on this statement.

239 By Mr. Osborn:

Q. Did you have any difficulty in getting the assessed value of the 1922 assessment?

A. Not very much. We understood of course, that the 1922 assessment was subject to equalization by this Board, but secured from the township assessors' books and the county clerk's records the assessment of these parcels as they came in for the year 1922.

By Mr. Clark:

Q. Were you able to complete it all?

A. As to these counties—there are two or three counties where the assessor said that the assessment of this year was the same as last and in that case we entered the 1921 assessment without going to each parcel in the record to get the *the* 1922 assessment and we accepted the assessors' statement that the lands were assessed the same as the year before.

By Mr. Osborne:

Q. In all these computations you have taken the assessed returns of the assessors out in the state and not the equalized figures as is yet to be fixed by this Board?

A. Yes sir, that is it. The equalization was not commenced when these figures were taken.

By Mr. Clark:

Q. You have agents still assembling data as to the mortgages and and sales we have not been able to carry in here?

A. Yes sir.

Mr. Clark:

Q. As far as this exhibit is concerned, for the items and the counties shown here, it is correct?

A. Yes sir.

240 Q. And it represents about how many loan companies?

A. Forty or forty-one.

Q. And the lands mortgaged, what was the minimum acreage taken, twenty acres?

A. Yes, twenty acres. No small irregular tracts.

Mr. Clark: Complainants now offer in evidence Exhibit "13."

Which said document, marked Exhibit "13," so offered and received in evidence, is in the words and figures as follows:

(Here follows Exhibit 13 to Scribner's Testimony, marked side folio pages 241 and 242.)

243 By Chairman Amsberry:

Q. What years do these mortgages cover?

A. The mortgages were made between March, 1920 and March, 1922 during a two-year period.

Mr. Clark: I will say to the Board and to counsel that all of this original data is subject to your inspection in Mr. Scribner's hands. You may check any of it at any time you desire, for the purpose of testing its accuracy.

Mr. Osborne: This would not be subject to our inspection for the reason that the loan companies themselves would not permit us to inspect their books. Isn't that true?

Mr. Clark: We have their statements to us and we are permitted to use them for this purpose.

By Mr. Osborne:

Q. The figures that you have here enumerated, Mr. Scribner, are the figures from the loan companies and not from your own personal inspection?

A. From the loan companies, yes sir.

By Chairman Amsberry:

Q. Did these companies state on what per cent they were loaning?

A. They varied somewhat as to that. I think the maximum was 50%, but generally around 40.

Mr. Clark, continuing:

Q. Mr. Scribner, the Loan Companies do they require applicants to file written applications?

A. Yes sir.

Q. And in there is the value stated?

A. The value stated by the owner.

244 Q. Then what does the Loan Company do? Do they accept that value?

A. They have an appraisement made.

Q. And these two items you have produced here are the statement made in the application made by the owner, of his own value of his own land.

A. Yes sir.

Q. And the value fixed thereon by the appraiser of the Loan Company?

A. Yes sir.

By Mr. Osborne:

Q. Mr. Scribner, you aggregate total number of acres mortgages, under this statement, you show 369,541 acres?
A. Yes sir.

By Mr. Osborne:

Q. That is correct?
A. Yes sir.

By Mr. Osborne:

Q. That is quite a nominal acreage as compared to the total number of acres in the State of Nebraska, is it not?
A. It is perhaps a rather small fraction of the entire acreage of the State of Nebraska, but it is scattered very generally over the State or over the Counties named in this statement.

By Mr. Osborne:

Q. As a matter of fact, it is a good deal less than a fair average of the Counties in the State, is it not?
A. It may be.

By Mr. Osborne:

Q. And it is not representative of an average of a single County in the State of Nebraska?

Mr. Dressler: You mean as to the amount of acreage?
245 Mr. Osborne: Yes, aggregate total.

By Mr. Osborne:

Q. It does not represent the area of the average of a single county in the State of Nebraska, does it?
A. Represent the entire acreage?
Q. Yes.
A. No sir, but we have say in Wayne County——
Mr. Osborne: You are not answering my question.
A. Perhaps I don't understand it fully.

Mr. Clark: Read the question.

(Question rea-s as follows:)

Q. "It does not represent the area of the average of a single county in the State of Nebraska, does it?"
A. I am unable to answer that of-hand. Of course, the statement itself shows the number of acres involved, which can be readily compared.

—

By Mr. Clark:

Q. Before leaving Exhibit "13" I will ask you this question: In the counties shown in Exhibit "13" are there any mortgages to Loan Companies not included therein, and if so describe how and why. That is, to other Loan Companies than the forty-one that reported?

A. There are, if I understand your question—investigations were made as to the mortgages on other lands than those included in this statement, but we were unable to get the information as to these mortgages because it was claimed that the records were not in the State—of the owner's valuation and the appraisement.

246 By Mr. Clark:

Q. And two companies refused, the Banker's Life and the Federal Land Bank?

A. Yes two refused.

The Chairman: We will take an adjournment now until two o'clock P. M.

Whereupon an adjournment was taken until two o'clock P. M. the same day, Tuesday, July 25th, 1922.

247 Tuesday, July 25th, 1922, two o'clock P. M., the Board met and hearing resumed pursuant to adjournment. Present as before.

A. W. SCRIBNER, a witness heretofore called and duly sworn on behalf of Complainants, resumed the stand and testified as follows:

Examined by Mr. Clark:

Q. There has been no change in your occupation since before luncheon?

A. No, I am still on the same job.

Q. You may look at Exhibit "14" and state to the Board the process which resulted in Exhibit "14."

A. We had a list of land sales of lands conveyed by warranty deeds between March 1st 1921 and April 1st, 1922, taken in fifty-three Nebraska Counties.

Q. Now, the counties that were not taken, in the territory of what railroad are they?

A. The counties that do not appear in this statement are Northwestern counties.

Q. They were assigned to the Northwestern to produce and they concluded to wait until the 1922 equalization was complete?

A. Yes sir, and we secured from the records the assessed value for the years 1921 and 1922 of the same parcels conveyed.

248 For a number of counties we also secured the 1920 assessed value, but not for all of them. The statement itself shows these where we had the 1920 assessment and where we did not.

Banne
Blaine
Box E

Buffal
Cass .
Chase

Cheye
Colfax
Custer

Dawso
Deuel
Dundy

Frank
Fronti
Furna

Gage
Garde
Garfie

ments which are not designated as taxes in the Interstate Commerce Commission account.

Q. How much of this sum mentioned is income taxes paid the Federal government?

A. The Federal tax?

Q. Yes.

A. I couldn't tell you exactly how much as between Federal income and Federal Capital stock; most of it is Federal income, and the Federal taxes amount to nearly a million dollars as apportioned to Nebraska.

Q. Would you mind getting me that figure?

A. The exact figure?

A. The exact figures of the income tax and the stock tax, both.

Q. We could do it right here because it is the difference between the figures shown as taxes on the revised statement and the figures shown as taxes on the original figures.

252 Q. I would like to have them separately stated?

A. I can get them in Omaha.

Q. Now, these figures are all worked up on the basis of the Interstate Commerce Commission accounting plan I presume, except as modified by the directions given by the State Railway Commission?

A. Yes sir.

Q. I notice here you mention the fact that the State Railway Commission has given some directions. In what particulars do the State directions vary from the Interstate Commerce Commission rules?

A. The Interstate Commerce Commission rules do not prescribe any formula, as I understand it, for apport-ing earnings as between States, that is, on interstate shipments and on interstate passenger traffic. The Interstate Commerce Commission prescribes the rules for figuring the entire revenue gross and net, but when it comes to dividing between States the Nebraska Railway Commission prescribes the formula.

Q. State for the record what the formula is for making the division?

A. I haven't it in mind, but you will find a copy I think in the report to the Nebraska Railway Commission.

Q. State that if you will.

A. Shall I read this?

253 Q. No, but it is all on a mileage pro rate basis, is it not?

A. On a mileage pro rate basis of earnings. Expenses are apportioned in a somewhat different manner.

Q. Now, that division on the basis laid down by the Nebraska State Railway Commission does not in any way—it is not, in any way, inconsistent with the rules of the Interstate Commerce Commission, the Interstate Commerce Commission simply has not provided any rules for divisions among states?

A. I think it has not interested itself in that.

Q. I wish you would state, in general, what the method of division is as to expenses. Take first your general expenses.

A. This report to the Nebraska State Railway Commission gives

the formula for expenses, headed "Instructions for Apportionment of Operating Expenses to State of Nebraska." "Nebraska's proportion of such Operating Expenses called for in items on pages 602 to 607 as can not be positively allocated, for the purpose of this report should be charged on the basis of the train mileage within Nebraska, as compared with the train mileage on the entire system."

Q. And you have followed that method in making up your report?

254 A. Our Auditor so states. The report is made by our Auditor and in it he says: "In compliance with the requirements of the Railway Commission of the State of Nebraska, Union Pacific Railroad Company furnishes statements of Earnings and Expenses in that State, in the compilation of which it has apportioned Revenues from Interstate Traffic and Expenses incurred in connection with such traffic to Nebraska and other States, on basis prescribed by the said Commission. For the purpose of this report, Revenues, Expenses, Taxes, Equipment Rents, Joint Facility Rents, and Uncollectible Railway Revenue were apportioned as between Nebraska and other States, in accordance with the formulas prescribed by that Commission." That is the Nebraska Railway Commission.

Q. Now, what dividends has your Company declared or did it declare during the year 1921?

A. That is shown in the report I think.

Q. The total amount is shown here but not separate dividends I think.

A. My understanding is it was ten per cent during the year on common stock and four per cent on preferred stock.

Q. Now, in addition to the dividends paid did your Com-
255 pany accrue any surplus during the year 1921? If so, how much?

A. I am not familiar with that subject. At least I could not answer it offhand without reference to the record. The figures on page 300 of the report to the Nebraska Railway Commission for the year ended December 31, 1921, appear to indicate that there was a credit to profit and loss account for the entire railroad of about $16,700,000.00.

Q. Let me ask you if this is not the figure that your Balance passed to Surplus, during the year 1921, was $8,096,624.50? (Indicating.)

A. That is probably correct. They would be correct figures because it is from the official record of the Company. That is for the entire railroad.

Mr. Magaw: Right there, shouldn't your statement, Mr. Scribner, about the sixteen millions, shouldn't that be withdrawn by you?

A. Yes.

Mr. Lamaster: Yes, that is satisfactory. The other figure is correct I think.

Q. You referred to and offered in evidence Exhibit "3," Real Estate, a list of real estate giving the values. You do not mean to say that was omitted property, do you, or what was the purpose of putting this in?

A. It was to show that all this railroad property which is
256 subject to taxation in Nebraska under the revenue law of Ne-
braska, the State Board of Equalization assesses all except
this property which is listed here. The property listed here is as-
sessed by local assessors.

Q. Hadn't that already been done prior to this time? I do not
understand the purpose of your putting that in at this time?

Mr. Osborne: I think the purpose there is to show the formula I
gave them, which was used by the Board, did not take into account
the value of the property that was locally assessed.

A. In other words, that while this property, particularly shops
and headquarters and a good deal of this property which is rented
and the rents credited to earnings, participates in making the earn-
ings used in that formula——

Mr. Lamaster: I understand.

Q. Referring to your Exhibit "13," how many Loan companies
did you say were consulted before this was made up?

A. That represents the answers from forty or forty-one Loan
Companies.

Q. Those are the largest companies doing business in the State,
are they?

A. Yes sir.

257 Q. This represents a value of about $109 an acre, doesn't
it, in the amount of appraisal by the Companies? That is an
average of about $109 per acre?

A. I haven't divided the valuation. You mean——

Q. The appraisal by the Loan Companies as divided by the num-
ber of acres?

A. It would be about that. I couldn't say exactly.

Q. In your Exhibit "14" you refer to sales between the 1st day of
March, 1921, and the 1st day of April, 1922.

A. Yes sir.

Q. Now, did you examine to see whether or not those sales were
made in pursuance of contracts made sometime previous?

A. It was my instructions to the parties who gathered the infor-
mation to use only what appeared to be, as far as they could see by
the record, bona fide sales between these dates.

Q. Well, the conveyances made in pursuance of contracts dated a
considerable period before would be bona fide sales?

A. If that was shown in the conveyance itself they were not taken.

Q. Ordinarily those are not shown?

A. Perhaps not.

Q. A contract might be made in 1920 and not consummated
258 until 1921 or 1922?

A. Some of them might be ten years old.

Q. As a matter of fact the great volume of dealing in real estate
in Nebraska was during the years 1919 and 1918, wasn't it?

A. I believe so.

Q. Isn't it true that a great portion of your transfers here show sales consummated in 1918 and 1919?

A. I couldn't say exactly.

Q. Isn't it a fact there wasn't practically any movement in real estate during the year 1921, except real estate that was turned over to mortgagees or was sold under foreclosure or other judicial proceedings; that there was very little, if any, real estate transferred where the sale was actually made and the deal made in the year 1921?

A. As to that I can only repeat that my instructions to the parties gathering this information were to take what was apparently, as far as they could learn, bona fide sales within this time, and I have seen quite a number of newspaper reports rather recently showing that a good deal of land is still being sold and as the writers seem to think at an even higher price than it was during what they called the "boom period."

259 Q. Have you investigated as to any of these sales to find out whether or not they were made in pursuance of contracts dated previously?

A. Our people were instructed to look after that and I assume they did that.

Q. In most cases the contract does not appeal of record?

A. It may or may not.

Q. In most cases it does not. Isn't that true? In most instances, although the contract is in writing, as a rule they do not put the contract on record?

A. I am afraid you are asking me to testify from information which is pretty meagre on my part. I can only certify as to the instructions to the parties who gathered this. My own personal knowledge is quite indefinite as to that matter.

Q. Did they report to you any sales made in pursuance of contracts entered into some time previous to the sale?

A. They did not. They were supposed not to do that if they knew of it.

Q. But as far as your records are concerned they are absolutely silent as to when these sales originated? That is to say, when the contract for sale was originally made?

A. As far as our record goes they simply show what appears on the record.

260 Q. Where a sale was made from "A" to "B" and then subsequently conveyed back from "B" to "A," was there any note made of that kind of a transaction?

A. Anything that appeared that way, whether a closing up of a sale or a re-transfer to the party who sold showing that the land was taken back, they were instructed not to take.

Q. Did they report instances of that kind?

A. They would occasionally find one in the record that was simply a cleaning-up transaction and not a sale and my instructions were to take nothing but what appeared as bona fide as far as they could learn.

Q. Those were bona fide sales?

A. If they showed anything of that kind they did not take the
Q. What I wish to know is: Do your original work sheets, fro
which this exhibit was compiled, show how many of these cases a
peared and how many they left out on that account?
A. They do not, because when they came to a case of that kin
they passed it up.
Q. Without making any note of it?
A. And they made no note of it.

By Mr. Clark:

Q. The memoranda they made, their original cards, are all su
ject to the inspection of this Board in any way they wish to u
them?
261 A. We have the original cards from which these we
taken.

Mr. Lamaster: Mr. Clark, we have made, in connection with t
Northwestern case, a detailed study of the conveyances in Cumi
County. Now, those are not tabulated yet so I can't give you a for
Mr. Clark: We haven't got Cuming in here yet.
Mr. Lamaster: But I understood this was put in for all the road
Mr. Clark: Yes.
Mr. Lamaster: Before this matter is fully submitted I will ha
those tabulated and I want to put in that tabulation showing t
number of conveyances in that county and the number that w
made in pursuance of prior contracts.
Mr. Dressler: A study for one county?
Mr. Lamaster: A study of that kind for one county only.
Mr. Dressler: For what period?
Mr. Lamaster: It covers substantially the same period that y
have here, as I recollect it.
Mr. Dressler: How did you get that data?
Mr. Lamaster: That is gotten at by personal investigation, i
quiry from the grantors, grantees and from the agents who made t
deals and bankers who held the contracts, and so forth.
Mr. Dressler: Is that the trump car- you have in the
262 fense of my lawsuit?
Mr. Lamaster: Yes sir, that is one of the lines of defen
I think that is all I have to ask Mr. Scribner.

Witness excused.

Which said document, so offered and received in evidence, is
the words and figures as follows:

Exhibit 14½.

"STATE OF NEBRASKA,
County of Lancaster, ss:

Harry W. Scott, being first duly sworn, on oath says he is dep
tax commissioner of the State of Nebraska and has held such o
for more than one year last past; that in connection with the

of Chicago & North Western Railway Company v. W. H. Osborne, Jr. et al. and the suit of Chicago, St. Paul, Minneapolis & Omaha Railway Company v. W. H. Osborne, Jr. et al., now pending in the District Court of the United States for the District of Nebraska, this affiant assisted in making a careful study of rural real estate values in a number of counties in Nebraska traversed by the lines of the said plaintiff railway companies; that in Cuming County, Nebraska, affiant assisted in making a particularly careful study of
263 rural real estate values and rural real estate transfers, especially transfers listed in the showings filed by the said companies in said suits; and that in pursuance of said studies affidavits were received from a large number of residents of Cuming County.

A summary of each of the affidavits which show two or more conveyances, or show definite listings for sale, or definite offers indicating value, or giving definite expressions of the owners of such real estate, or of definite expressions of value of those who are qualified to testify as to real estate values in said county, is given below. Conveyances not made in the usual course of business, or made between relatives, or those of small or fractional tracts, are not included herein. Legal descriptions are omitted. Record book and page are stated. All of the affidavits refer to Cuming county land.

Fred Thietje, real estate dealer, states that from June 1 to December 1, 1921, real estate in Cuming County fell at least twenty-five per cent; that in 1919, John Clatanoff was offered $325 per acre for eighty acres and that $125 per acre is the best offer now obtainable. Affidavit dated December 1, 1921.

F. C. Evans, real estate dealer, in that business twenty-seven years, states that since 1919 real estate in Cuming county has depreciated at least fifty per cent; that during the past year he appraised several tracts of land for inheritance tax assessment; that such appraisals ran from $100 to $175 per acre, which he considers a fair value for Cuming County real estate on April 1, 1921. Affidavit dated December 2, 1921.

264 Paul Kase states that on September 24, 1919, he sold 78 acres for $23,400; that the same was reconveyed (Book 25, page 561) January 21, 1920, as purchaser would not complete transaction; that he is now anxious to sell said real estate for $11,700. Affidavit dated December 3, 1921.

Henry Behrens, banker at Beemer, states that in August, 1919, on behalf of one of his customers he offered to Rudolph Brazda $275 per acre for 390¾ acres, which offer was declined; that the land was sold at public auction in partition action on November 26, 1921 for $147 per acre. Affidavit dated December 1, 1921.

Wm. A. Smith, banker at Beemer, states that on the 14th day of February, 1920, he sold 80 acres for $23,000, sale being made in pursuance of a contract made on December 19, 1919; that on May 14, 1921, his grantee contracted to sell said land for $15,000, or $8,000 less than he (W. A. Smith) received; that said transaction is representative of the general decline in real estate values during

the past year. (Book 26 of Deeds, page 308.) Affidavit d
December 1, 1921.

Henry Gentrup states that one-half section was sold in 191
$112,000, only a portion of which was conveyed to the purch
and that was afterwards reconveyed to the grantor; that on Ma
21, 1921, he (Henry Gentrup) bought the same land for $80,0
that the land has continued to decrease in price and that if he w
now purchasing he would not pay as much for it as when he bo
it. (Book 26, pages 697, 698.) Affidavit dated December 3, 19

John Cerny states that on March 1, 1920, in pursuance o
written contract dated June 18, 1919, he sold 160 acres for $40,0
that on April 1, 1921, the fair market value did not exceed $31,0
(Book 25, page 329.) Affidavit dated December 14, 1921.

Adolph Behrens states that on January 3, 1920, he purchased
acres of land in pursuance of a written contract made in June, 19
for $14,800; that the fair market value thereof on April 1, 19
was not to exceed seventy per cent of said amount. (Book 25, p
664.) Affidavit dated December 14, 1921.

Rudolph Rhode states that on February 26, 1921, he purcha
80 acres for $18,000; that on April 1, 1921, the fair market v
thereof was not to exceed $12,000; that owing to the fact t
265 the land lay directly across the road from his home ca
him to pay more than the ordinary purchaser would h
paid therefor. (Book 28, page 113.) Affidavit dated December
1921.

Wm. Throener states that in pursuance of a written contract m
in July, 1919, he purchased on February 21, 1920, a quarter sec
of land for $59,280; that the fair market value of said land on A
1, 1921, was not to exceed $35,000. (Book 25, page 592.) Affi
dated December 14, 1921.

Richard H. Holsten states that in pursuance of a written cont
dated July 2, 1919, he purchased 80 acres on March 1, 1920
$23,450; that the purchase included other lands and that the p
chase price was averaged making the amount above mentioned s
what too high for the land described in the deed; that the f
market value of the 80 acres mentioned on April 1, 1921 would
exceed sixty-five per cent of said sum. (Book 25, page 617.) A
davit dated December 14, 1921.

Richard H. Holsten states that in pursuance of a written cont
dated July 2, 1919, he purchased on February 28, 1920, 80 acres
$22,800; that the fair market value of said tract on April 1, 19
would not exceed sixty-five per cent of the sum named. (Book
page 626.) Affidavit dated December 14, 1921.

Charles Hrabek states that in pursuance of a written contract d
July 12, 1919, he purchased on February 28, 1920, 80 acres
$21,060; that on April 1, 1921, the fair market value thereof w
not exceed sixty-five per cent of said purchase price. (Book
page 628.) Affidavit dated December 14, 1921.

Charles Hrabek states that in pursuance of a written cont
dated August 11, 1919, he sold on March 1, 1920, 80 acres of l
for $24,048; that on April 1, 1921, the fair market value th

ould not exceed sixty-five per cent of said purchase price. (Book
5, page 629.) Affidavit dated December 14, 1921.

Walter Reeson states that on January 1, 1920, he sold 160 acres
or $55,407 in pursuance of a written contract dated June 28, 1919;
hat owing to the fact that the grantee owned adjoining land it in-
uced him to pay considerably more than any other purchase would
ave paid; that if said land had been offered for sale during the
ast year it would not have brought over three-fifths of said purchase
price. (Book 26, page 192.) Affidavit dated December 1,
6 1921.

Walter Reeson states that in pursuance of a written con-
act made June 28, 1919, he sold 160 acres of land for $65,593;
hat owing to the fact that grantee owned land adjoining he was in-
uced to pay considerably more than any other purchaser would
ave paid; that if said land had been offered for sale during the
ast year it would have been impossible to receive over three-fifths
f the amount of said purchase price. (Book 26, page 193.) Affi-
avit dated December 1, 1921.

Fred Thietje, real estate dealer, states that he is familiar with the
uarter section of land sold by Charles Kappius to Joseph Guenther
n March 1, 1920, for a consideration of $63,200; that said Guen-
her paid $20,000 in cash and gave a mortgage for the balance; that
said land had been offered for sale at any time during the past
x months it would not have sold for the amount of the mortgage.
Book 26, page 277.) Affidavit dated December 1, 1921.

Frank L. Boyer states that in pursuance of a written contract
ated June 13, 1919, he conveyed to Henry Rolf on February 24,
920, a quarter section of land for $41,500; that owing to the fact
hat Rolf had relatives living near said land he was induced to pay
more than the ordinary purchaser would have paid; that had he
wned said land in March, 1921, or at any time since he could not
ave received to exceed $28,000 therefor. (Book 26, page 291.)
ffidavit dated dated December 3, 1921.

Fred W. Jarrett states that in pursuance of a written contract
ated July 22, 1919, he conveyed on March 1, 1920, a quarter sec-
on of land for $26,400; that the purchaser was not able to settle on
rms specified and that said land has so depreciated in value that
he has to take back the land he would not give to exceed therefor
more than the sum of $14,284, being the incumbrances on said land.
Book 26, page 334.) Affidavit dated December 1, 1921.

Frank H. Harstick states that in April, 1919, he contracted to
urchase 160 acres of land for $20,250; that about three months
ter he sold the same for $22,500; the conveyance being made in
920; that if he had not sold the land at the time he did it would
ave been impossible for him to receive as much as he paid for it
any time during the year 1921. (Book 26, page 424). (Book
26, page 345.) Affidavit dated December 3, 1921.

Fred Thietje states that in pursuance of a written con-
tract dated October 7, 1919, he conveyed on March 1, 1920,
acres of land for $22,000; that if said land were to be sold now,
had been sold during the past six months, it would not

have brought to exceed $12,000. (Book 26, page 487.) Affida
dated December 1, 1921.

Albert Bracht states that in pursuance of a written contract ma
in July, 1919, he purchased on February 20, 1920, 80 acres
land for $20,000; that the fair market value of said land on Ap
1, 1921, was $14,000. (Book 26, page 263.) Affidavit dated D
cember 14, 1921.

Bernard Hunke states that in pursuance of a written contr
made in August, 1919, he purchased 80 acres of land on Febru
26, 1920; that the fair market value thereof on April 1, 1921, d
not exceed $14,000. (Book 26, — 375.) Affidavit dated Decemb
14, 1921.

Emil Wegner states that in pursuance of a written contract ma
in September, 1919, he purchased on March 3, 1920, a certa
tract of land (acreage not clearly stated) for $44,880; that on Ap
1, 1921, the fair market value thereof would not exceed $27,5
(Book 26, page 411.) Affiavit dated December 16, 1921.

John K. Erb states that in pursuance of a written contract ma
in August, 1919, he purchased February 21, 1920, a quarter sect
of land for $20,800; that if he were to have purchased said land
April, 1921, he would not have paid to exceed $12,000 for it. (Bo
26, page 286.) Affidavit dated December 16, 1921.

Hugo M. Nicholson, states that in pursuance of a written contr
dated August 7, 1919, he sold 80 acres of land for $16,800; th
said land did not exceed in value on April 1, 1921, the sum
$10,000. He further says that in his opinion land in Cuma
County had on April 1, 1921, decreased in value to the extent
forty to fifty per centum of its value in 1919 and in the spring
1920. (Book 26, page 398.) Affidavit dated December 13, 19
Herman Lemke states that in pursuance of a written contr
dated August 7, 1919, he purchased on March 30, 1920, a quar
section of land for $24,000; that the same could not have be
sold on April 1, 1921, to exceed $16,000. (Book 26, page 39
Affidavit dated December 16, 1921.

268 Herman Lemke states that in pursuance of a written co
tract made February 7, 1920, on the 30th day of Marc
1920, he sold a quarter section of land for $24,800; that the f
market value of said land on April 1, 1921, did not exceed $16,0
(Book 26, page 400). Affidavit dated December 16, 1921.

Henry W. Peters states that in pursuance of a written contr
dated August 8, 1919, he sold on March 22, 1920, 80 acres of la
for $16,400, taking back a mortgage for $10,000; that only a p
of the interest has been paid thereon during the past year and th
if said mortgage be foreclosed the land will not bring any more th
the amount of the mortgage. (Book 26, page 408.) Affida
dated December 16, 1921.

Clarence Galbraith states that in pursuance of a written contr
dated March 15, 1919, he purchased on February 26, 1920,
acres for $26,000; that he considered $16,000 as a fair market va
of said land at the present time. (Book 26, page 254). Affida
dated December 2, 1921.

J. H. Emley states that in pursuance of a written contract dated September 30, 1919, he sold on February 28, 1920, 240 acres of land for $78,000; that there are now mortgages on said land for $40,000 and that he would not give to exceed the amount of the mortgages for the land; that the land was not worth any more on April 1, 1921, than at the present time. (Book 26, pages 288-289.) Affidavits dated December 2, 1921.

Clarence Galbraith states that in pursuance of a written contract dated November 14, 1919, he purchased from W. A. Smith on February 14, 1920, a quarter section of land for $48,000; that he considers $28,800 to be the fair market value of said land at the present time. (Book 26, page 307). Affidavit dated December 2, 1921.

Wm. A. Smith states that on March 1, 1920, Andrew R. Olson conveyed 80 acres of land for $26,000. (Deed in Book 26, page 323); that he is authorized by the grantee, the present owner, to sell the same for $16,000, or for $10,000 less than the price paid. (Book 26, page 323.) Affidavit dated December 2, 1921.

A. R. Oleson states that in pursuance of a written contract 269 dated August, 1919, he sold on March 1, 1920, 80 acres of land for $26,000; that on April 1, 1921, he believed it could have been sold for $225 per acre but that at this time it was doubtful whether it could be sold for over $200 per acre. (Book 26, page 323.) Affidavit dated December 13, 1921.

Ben Martin states that in pursuance of a written contract made in August, 1919, he sold a quarter section of land for $60,000; that on April 1, 1921, the same could not have been sold for more than $40,000. (Book 26, page 366). Affidavit dated December 13, 1921.

O. H. Wegner states that in pursuance of a written contract made May 29, 1919, he sold on February 26, 1920, 80 acres of land for $18,800; that the fair market value thereof on April 1, 1921, did not exceed $14,000. (Book 26, page 306.) Affidavit dated December 16, 1921.

John F. Jurgenson states that in pursuance of a written contract made in August, 1919, he purchased on February 28, 1920, a quarter section for $42,400; that the fair market value thereof on April 1, 1921, did not exceed $32,000. (Book 26, page 311.) Affidavit dated December 16, 1921.

John B. Wingert states that in pursuance of a written contract made in July, 1919, he sold in February, 1920, 80 acres of land for $25,408.50; that the fair market value thereof on April 1, 1921, would not exceed $200 per acre. (Book 25, page 603.) Affidavit dated December 15, 1921.

Geo. W. Breitbarth states that in pursuance of a written contract dated July 7, 1919, he purchased a quarter section for $42,300; that he was unable to meet his payments thereon and turned the same over to his father; that although he had placed numerous improvements on said land he considers that its fair market value on April 1, 1919, to be approximately $18,000. (Book 35, page 615.) Affidavit dated December 15, 1921.

Joseph Leimer states that in pursuance of a written contract made in July, 1919, he purchased on March 1, 1920, a quarter section for $53,600; that the fair market value thereof on April 1, 1921, would not exceed $32,000. (Book 26, page 297.) Affiavit dated December 15, 1921.

Ernest F. Beckmann states that in pursuance of a written
270 contract made in June, 1919, he purchased on February 1,
1920, 80 acres of land for $24,000; that owing to its situation he paid more therefor than the ordinary purchaser would have paid; that the land has depreciated in value not less than thirty-five per cent since the date of the agreement. (Book 28, page 7.) Affidavit dated December 15, 1921.

O. L. Nelson states that in pursuance of a written contract dated June 21, 1919, he sold on February 19, 1920, 80 acres of land for $36,349; that on or about September 1, 1921, he re-purchased said land from his grantee for the sum of $24,000. (Book 26, page 376.) Affidavit dated December 5, 1921.

Jerome K. Brazda states that Andrew Oleson, on March 1, 1920, sold 80 acres of land for $26,000 (Deed recorded in Book 26, page 323); that thereafter on November 25, 1921, he purchased said 80 acres for $14,800 (Deed recorded in Book 27, page 104); he says that the general depreciation in the fair market value between the 1st day of March, 1920, and November, 1921, is about the same proportion as the depreciation in value of the said 80 acres. Affidavit dated January 6, 1922.

Joseph W. Kellinghaus states that in pursuance of a written contract he purchased on February 26, 1920, a quarter section for $53,400; that the fair market value of the same on April 1, 1921, would not exceed $36,000. (Book 25, page 651.) Affidavit dated December 31, 1921.

Joseph S. Uhing states that in pursuance of a written contract made in September, 1919, he purchased on February 28, 1920, 80 acres of land for $26,000; that the fair market value thereof on April 1, 1919, would not exceed $13,000. (Book 26, page 268.) Affidavit dated December 31, 1921.

N. F. Hansen states that in pursuance of a written contract made in May, 1919, he sold, February 25, 1920, a quarter section for $36,000; that the fair market value thereof on April 1, 1921, would not exceed $24,000. (Book 26, page 249.) Affidavit dated December 30, 1921.

Oscar Hultquist states that in pursuance of a written contract made in June, 1919, he purchased on February 26, 1920, 200 acres
for $60,000; that the fair market value of the above real
271 estate on April 1, 1921 would not exceed $30,000. (Book 26, page 346.) Affidavit dated December 29, 1921.

William B. Ockander states that in pursuance of a written contract made in July, 1919, he purchased on January 19, 1920, 80 acres of land for $21,200; that the fair market value thereof on April 1, 1921, would not exceed $12,000. (Book 25, page 633.) Affidavit dated December 29, 1921.

Ludwig Otterstein states that on March 1, 1920, he sold a quar-

ter section of land for $36,000; that the fair market value thereof on April 1, 1921, would not exceed $18,000. (Book 26, page 276.) Affidavit dated December 30, 1921.

Ida Zuhlke states that in pursuance of a written contract made in August, 1919, she sold on March 1, 1920, a quarter section of land for $39,000; that the fair market value of the same on April 1, 1921, would not exceed $18,000. (Book 26, page 275.) Affidavit dated December 30, 1921.

O. C. Anderson states that on July 7, 1920, as referee, he sold 80 acres of land for $28,440; that the fair market value of the same on April 1, 1921, would not exceed $16,000. (Book 28, page 92.) Affidavit dated December 30, 1921.

H. L. Morse states that in pursuance of a written contract dated May 17, 1919, he purchased on February 26, 1920, a quarter section for $48,000; that the fair market value thereof on April 1, 1921 would not exceed $24,000. (Book 25, page 604.) Affidavit dated December 29, 1921.

Andrew C. Johnson states that in pursuance of a contract made in December, 1920, he purchased on June 1, 1921, 82 acres for $14,602; that the fair market value thereof on April 1, 1921, would not exceed $12,000. (Book 28, page 150.) Affidavit dated December 29, 1921.

Emil Zuhlke states that in pursuance of a written contract made in December, 1919, on February 10, 1920, he sold to Philip Graff 80 acres of land for $21,200; that the fair market value thereof on April 1, 1921, would not exceed $11,000. (Book 26, page 303.) Affidavit dated December 29, 1921.

Joseph Herzinger states that in pursuance of a written contract made in November, 1919, he sold to Alfred Miller a quarter section of land on March 1, 1920, for $48,000; that the fair market value thereof on April 1, 1921, would not exceed $32,000. (Book 26, page 369.) Affidavit dated December 28, 1921.

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Emil Wegner states that in pursuance of a written contract made in August, 1919, he sold on March 31, 1920, 120 acres of land for $50,000; that the fair market value thereof on April 1, 1921, would not exceed $30,000. (Book 26, page 413.) Affidavit dated December 28, 1921.

Gerhard Schweers states that in pursuance of a written contract dated January 24, 1920, he sold on January 30, 1920, a quarter section of land for $54,000; that the fair market value thereof on April 1, 1921, would not exceed $27,000. (Book 26, page 426.) Affidavit dated December 28, 1921.

Michael Kerler states that in pursuance of a written contract made in June, 1919, he sold on March 1, 1920, 80 acres of land for $28,000; that the fair market value thereof on April 1, 1921, would not exceed $14,000. (Book 26, page 365.) Affidavit dated December 22, 1921.

J. F. Zajicek states that he is cashier of the Nebraska State Bank at West Point and secretary-treasurer of the West Point National Farm Loan Association; that he knows of the sale of a quarter sec-

tion of land by John Elsinger (Deed recorded in Book 26, page 278) in pursuance of a written contract entered into during the fall of 1919; that on September 24, 1921, the grantee applied for a loan and said land was appraised by the West Point National Farm Loan Association on September 26, 1921, for $12,000; that thereafter an examination was made for the Federal Land Bank and its examiner reduced the valuation to $11,200; that if he were to have purchased said land on April 1, 1921, he would not have given to exceed $12,000. Affidavit dated December 20, 1921.

Chas. W. Johnson states that in pursuance of a written contract made in September, 1919, he purchased on February 27, 1920, 160 acres of land for $52,000; that the fair market value thereof on April 1, 1921, would not exceed $44,000; (Book 25, page 643.) Affidavit dated December 22, 1921.

Adolph English states that in pursuance of a written contract made March 19, 1919, he purchased a quarter section for $36,000; that the fair market value thereof on April 1, 1921, would not
273 exceed $24,000. (Book 26, page 255.) Affidavit dated December 21, 1921.

W. E. Webb states that in pursuance of a written contract made on April 26, 1919, he purchased on March 27, 1920, a quarter section of land for $45,000; that the fair market value thereof on April 1, 1921, would not exceed $25,000. (Book 26, page 406.) Affidavit dated December 21, 1921.

Ferd Schlecht states that in pursuance of a written contract made in January, 1920, he purchased on the 26th day of January, 1920, 80 acres of land for $26,000; that the fair market value thereof on April 1, 1921, would not exceed $13,000. (Book 26, page 273.) Affidavit dated December 21, 1921.

Joseph Neiman states that in pursuance of a written contract dated July 9, 1919, he purchased on March 1, 1920, 80 acres of land for $33,600; that the fair market value thereof on April 1, 1921, would not exceed $16,000. (Book 26, page 352.) Affidavit dated December 21, 1921.

George Konopik states that in pursuance of a written contract made in January, 1920, he purchased on February 14, 1920, 80 acres of land for $22,000; that the same joins land already owned by him which induced him to pay more than the ordinary purchaser would have paid; that the fair market value thereof on April 1, 1921, would not exceed $12,000. (Book 26, page 420.) Affidavit dated December 21, 1921.

J. F. Zajicek states that he is a cashier of the Nebraska State Bank at West Point and secretary-treasurer of the West Point National Farm Loan Association; that he knows of the sale by William Neary of the quarter section of land for $20,000 (Deed recorded in Book 26, page 671), said conveyance being made in pursuance of a written contract made in the summer of 1920; that on April 1, 1921, the fair market value of said land would not exceed $7,000. Affidavit dated December 20, 1921.

W. F. Bolt states that in pursuance of a written contract made in September, 1919, he purchased on February 25, 1920, a quarter s

tion for $56,000; that the fair market value of the same on April 1, 1921, would not exceed $24,000. (Book 26, page 298). Affidavit dated December 21, 1921.

William H. Fillmer states that in pursuance of a written
274 contract made in July, 1919, he purchased on February 26, 1920, 100 acres of land for $42,000; that the fair market value thereof on April 1, 1921, would not exceed $21,000. (Book 26, page 253.) Affidavit dated December 21, 1921.

Percy Nellar states that in pursuance of a written contract made in September, 1919, he purchased on February 26, 1920, a quarter section of land for $53,200; that the fair market value of the same on April 1, 1921, would not exceed $32,000; (Book 26, page 436). Affidavit dated December 21, 1921.

John Ahrens states that in pursuance of a written contract made in July, 1919, he purchased on February 27, 1920, a quarter section of land for $56,000; that the fair market value thereof on April 1, 1921, would not xceed $28,000. (Book 26, page 331.) Affidavit dated December 22, 1921.

Carl Steinbaugh states that in pursuance of a written contract made in August, 1919, he purchased on February 27, 1920, a quarter section of land for $48,000; that the fair market value thereof on April 1, 1921, would not exceed $40,000. (Book 25, page 590.) Affidavit dated December 22, 1921.

Carl Steinbaugh states that in pursuance of a written contract made in May, 1919, he purchased on February 21, 1920, a quarter section of land for $42,400; that the fair market value thereof on April 1, 1921, would not exceed $38,500. (Book 25, page 589.) Affidavit dated December 22, 1921.

John Jahnke states that in pursuance of a written contract made in July, 1919, he purchased on February 25, 1920, a quarter section of land for $52,000; that the fair market value thereof on April 1, 1921, would not exceed $24,000. (Book 26, page 284.) Affidavit dated December 21, 1921.

John Doffin states that in pursuance of a written contract made in May, 1919, he purchased on March 1, 1920, a quarter section of land for $15,200; that the fair market value thereof on April 1, 1921, would not exceed $8,000. (Book 26, page 351). Affidavit dated December 21, 1921.

Charles Jugel states that in pursuance of a written contract made May 31, 1919, he sold on March 1, 1920, 80 acres of land for $24,000; that the fair market value thereof on April 1, 1921, would not exceed $16,000. (Book 26, page 296.) Affidavit dated De-
275 cember 21, 1921.

Marcus Peterson states that in pursuance of a written contract made in March, 1919, he sold on March 1, 1920, 80 acres of land for $16,195; that the fair market value thereof on April 1, 1921, would not exceed $150 per acre. (Book 26, page 282.) Affidavit dated December 20, 1921.

John Pribnow states that in pursuance of a written contract made in June, 1919, he purchased on February 6, 1920, 80 acres of land for $14,000; that the fair market value thereof on April 1, 1921

would not exceed $10,000. (Book 25, page 600.) Affidavit dated December 20, 1921.

Henry F. Pribnow states that in pursuance of a written contract made in June, 1919, he purchased on February 16, 1920, 80 acres of land for $14,000; that the fair market value thereof on April 1, 1921, would not exceed $10,000. (Book 25, page 601.) Affidavit dated December 20, 1921.

Alfred Anderson states that in pursuance of a written contract made March 30, 1920, he purchased on March 1, 1921, a quarter section of land for $54,230; that the fair market value thereof on April 1, 1921, would not exceed $32,000. (Book 28, page 112.) Affidavit dated December 20, 1921.

John Henry Witte states that in pursuance of a written contract made in September, 1919, he purchased on February 27, 1920, a quarter section for $55,200; that the fair market value thereof on April 1, 1921, would not exceed $32,000. (Book 25, page 626.) Affidavit dated December 20, 1921.

Carl Spering states that in pursuance of a written contract made in August, 1919, he purchased on March 1, 1920, 200 acres of land for $57,280; that the fair market value thereof on April 1, 1921, would not exceed $35,000. (Book 26, page 373.) Affidavit dated December 19, 1921.

Carl Spering states that in pursuance of a written contract made in August, 1919, he sold on March 1, 1920, 80 acres of land for $20,000; that the fair market value thereof on April 1, 1921, would not exceed $10,000. (Book 26, page 333.) Affidavit dated December 19, 1921.

276 Robt. Roggenbach states that in pursuance of a written contract made in October, 1919, he purchased on March 3, 1920, a quarter section of land for $40,920, purchasing it for one of his sons and probably paying more than the ordinary purchaser would have paid; that the fair market value thereof on April 1, 1921, would not exceed $21,000. (Book 25, page 658.) Affidavit dated December 19, 1921.

O. E. Bishop states that in pursuance of a written contract made in November, 1919, he purchased on February 17, 1920, 80 acres of land for $27,000; that the fair market value thereof on April 1, 1921, would not exceed $16,000. (Book 26, page 285.) Affidavit dated December 19, 1921.

H. W. Faubel states that in pursuance of a written contract dated April 11, 1919, he sold on April 1, 1920, a quarter section of land for $45,000; that the fair market value thereof on April 1, 1921, would not exceed $24,000. (Book 26, page 418.) Affidavit dated December 19, 1921.

Archie M. Ford states that in pursuance of a written contract made in December, 1919, he sold on February 27, 1920, 80 acres of land for $22,000; that the fair market value thereof on April 1, 1921, would not exceed $16,000. (Book 25, page 598.) Affidavit dated December 22, 1921.

J. C. Elliott states that he was county attorney of Cuming County; that during the year 1921, he participated in eight hearings for the

purpose of appraising estates to determine the amount of inheritance tax therefrom; that during the year 1921 the results of such hearings and appraisements were as follows:

2	tracts	$225	per acre.
1	"	200	" "
2	"	190	" "
1	"	180	" "
6	"	175	" "
1	"	150	" "
1	"	125	" "
1	"	100	" "

that many of the lands thus appraised were readily salable in 1918 and 1919 from $350 to $400 per acre.

Affiant further says that all of the affidavits mentioned
277 above are now available for inspection by any of the parties interested in this hearing. Harry W. Scott.

Subscribed and sworn to before me this 22nd day of July, 1922. D. M. Amsbery, Secretary of State. (Seal.)

(End of Exhibit 14½.)

Mr. Clark: Complainants now offer in evidence from Exhibit "15" the first page of the Fourteenth Census of the United States: 1920 Bulletin: Agriculture: Nebraska. And offer from the second page Table 5.—Average Value per Acre: 1860 to 1920. And commencing on page 12 I offer the headlines on pages 12 and 13, and then the sub-headline "County Table I.—Farms and Farm Property, 1920, with selected items for 1910 and 1900," and the next line, being "The State" and the list of counties extending over pages 12, 13, 14, 15, 16, 17, 18, 19, 20, closing with the County of York *on* the last column of that page. Under the column headed "State" and then the columns with the name at the head of each county I introduce on those pages Line 49 entitled "Land alone per acre — dollars —" following that line through to page 14 and
278 through to page 20 inclusive.

Which said document, marked Exhibit 15, containing the matters above offered and received in evidence, is attached hereto and returned herewith as follows:

279 Mr. Clark: Now, Gentlemen of the Board, and Mr. Lamaster, if you desire I will bring in the field men who collected this data from the different counties for us, if you have any question about the accuracy or the good faith of the work we did in the field.

Mr. Lamaster: As far as I am concerned I do not have any question of the accuracy of the figures. I am inclined to think that the transfer- do not really reflect conditions because of the fact that a great many of these deals were not consummated for a long time after the contract was made, due to the fact that many of the contracts were drawn that way and the further fact that financial con-

ditions were bad and that postponed a good many deals, and the further fact that a good many of these transfers are probably, in effect, a part of the cleaning-up process.

Mr. Clark: That does not refer to the mortgage record.

Mr. Lamaster: That is only my personal notion. If the Board——

Mr. Osborne: I do not doubt but that is true, and a correct copy of those records.

Mr. Dressler: Is it your position that this data we have that is based on the transfers is of no value because it may be a cleaning-up process?

280 Mr. Lamaster: I would not say it is of no value, but I would say it is not a very great value because of the enormous shrinkage in values.

Mr. Dressler: Does the Board have any source of information that is better?

Mr. Lamaster: That one County I mentioned I think will show the facts.

Mr. Dressler: Is there any better or different basis for arriving at the market value of land than the one that is presented here?

Mr. Lamaster: I believe there is.

Mr. Dressler: What is it?

Mr. Lamaster: That is the sales actually made during the period about April 1st early part of the year 1922, sales actually made then that hadn't anything to do with any previous transaction.

Mr. Clark: It is admitted that for the year 1921 the total value of property in the state was $3,305,401,864.00. Of that amount lands and improvements constituted $1,811,973,691.00; that the lands and improvements represented 54.8 per cent of the total. Acres of land in the state being 46,389,534. The average value per acre for 1921 was $39.06 per acre.

Mr. Osborne: I think we ought to have the resolution in there.

281 Mr. Clark: I introduced it.

Mr. Osborne: That resolution does not contain your road, Mr. Dressler.

Mr. Clark: There is a special resolution for the Northwestern?

Mr. Osborne: Yes.

Mr. Dressler: It is in the same language but with different figures.

Mr. Clark: Complainants offer in evidence the resolutions of the Board fixing the assessed value of the Chicago & Northwestern Railway Company, which will be exhibit "16."

Which said document, marked Exhibit "16," so offered and received in evidence, is in the words and figures as follows:

Exhibit 16.

"Office of the Governor, Lincoln, Nebraska.

June 27th, 1922.

Resolved; That we, the State Board of Equalization and Assessment, in regular session held for the purpose of valuing and assessing the North Western Railroad in the State of Nebraska, for the purpose of taxation of their property in the said state, and having given due and full consideration to the returns furnished said Board by the said railway company, and having taken into con-
282 sideration the main track, side track, spur track, ware-house tracks, road bed, right of way and depot grounds, and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand, and supplies, monies, credits, franchises, and all other property of said railroad company, and having taken into consideration the gross and net earnings of the said railroad, the total amount expended in operation and maintenance, the dividends paid, the capital stock of the system, and the market value thereof, and the total amount of secured and unsecured indebtedness, and from all the information which we are able to obtain, do hereby ascertain, appraise, fix and assess for the purpose of general taxation, the full actual value of the property of the Chicago & North Western R. R. in the State of Nebraska as hereinafter recited: $38,714,373.00."

(End of Exhibit 16.)

Mr. Magaw: I desire to recall Mr. Scribner for a matter.

A. W. SCRIBNER, a witness heretofore called and duly sworn was recalled and testified as follows:

Examined by Mr. Magaw:

Q. Mr. Scribner, I hand you Exhibit "17," and I will ask you to state what that is.

A. This is a statement compiled by me showing the capi-
283 talization, market value of the Union Pacific System December 31, 1921, based on average market prices of stocks and bonds for the year 1921.

Q. Is it correct?

A. It is taken from the figures furnished me by the Comptroller's Office from New York. A copy of this was filed with the State Board of Equalization in May last.

Q. That is, this is a copy of the original filed with the Board last May?

A. Yes sir.

Mr. Magaw: We offer Exhibit "17" in evidence.

Which said document, marked Exhibit "17," so offered and received in evidence, is in the words and figures as follows:

284 **Exhibit 17 to Scribner's Testimony.**

Union Pacific System.

Statement of Capitalization, December 31st, 1921.

	Par or face value.	Average market price, 1921.	Average market value, 1921.
U. P. R. R. Co. Common	$222,291,600	121½	$270,084,29[illegible]
U. P. R. R. Co. Preferred	99,543,500	68⅜	68,062,86[illegible]
Total stocks.....	$321,835,100		$338,147,1[illegible]
Bonds:			
As per list attached....	379,665,530		319,279,5[illegible]
Total Stocks and Bonds, Market Value.....			$657,426,6[illegible]

Less deductions of property and securities which are not parts of the corporate plant, but which are assets entering into and enchancing the value of the stocks and bonds of the System.

Auxiliary and Investment Stocks, Bonds, Certificates and Notes, as per list:		
Par or Face Value.....	$324,381,132	
Book Value, Dec. 31st, 1921....	$290,948,294	
Advances to affiliated Companies.—..	9,994,556	
Current Assets in excess of Current liabilities	20,962,247	
Sinking Funds	172,960	
Miscellaneous Physical Property.....	1,140,622	
Land Assets	2,435,924	
Water Line Properties (Estimated)...	1,500,000	
		$327,154,6[illegible]
Net capitalization, Market Value.....		$330,272,0[illegible]
Miles First Main Track.....		7,900.[illegible]
" Add'l " "		1,161.[illegible]
Net Capitalization per roadway mile, (Main Track).		41,8[illegible]

Union Pacific System.

Bonds Outstanding December 31st, 1921.

		Par or face value.	Average m'k't price, 1921.	Average m'k't value, 1921.
U. P. 1st Mtge. R. R. & Land Grant	4%	$100,000,000	85¼	$85,250,000
U. P. 1st Lien & Refunding	4%	65,817,670	78¾	51,831,415
U. P. 20 year Convertible	4%	26,835,225	86⅝	23,246,014
U. P. 10 year Collateral	6%	20,000,000	100⅛	20,025,000
U. P. Serial Equipment Trust	7%	10,000,000	102	10,200,000
O. S. L. R. R. Consol, 1st Mtge	5%	12,328,000	94½	11,649,960
O. S. L. Ry. 1st Mtge	6%	14,931,000	98⅞	14,763,026
O. S. L. Ry. 25 year refunding	4%	45,000,000	83⅞	37,723,750
U. & N. 1st Mtge. Extended	4%	4,991,000	79¾	3,980,323
U. & N. Consol. 1st Mtge	5%	1,441,000	94	1,354,540
O. W. R. & N. 1st & Ref. Mtge	4%	54,669,135	73¾	40,318,487
O. R. R. & N. Consol. Mtge	4%	23,380,000	80	18,704,000
O. S. L. Income A		272,500	85½	232,987
Totals		$379,665,530		$319,279,502

286 Mr. Magaw: I believe that is all with Mr. Scribner on that.

Mr. Clark: Now, Mr. Secretary, in my petition I ask that the Counties be notified to be here at this hearing and that their valuations be raised. Was there any notice sent to them as to that?

Mr. Osborne: I want this to go in the record: They are cited to appear here next Monday.

Mr. Clark: Was there any notice sent out to them of this complaint?

Mr. Osborne: No sir, because the abstracts are not all in.

Mr. Dressler: Do I understand the Counties have been notified to appear sometime?

Mr. Osborne: Yes.

Mr. Clark: When is that hearing to be?

Mr. Osborne: Next Monday.

Mr. Clark: Does that apply as to all the counties in the state or part of them?

Mr. Osborne: Applies to what is here.

Mr. Clark: Now, may I ask the Board and the Tax Commissioner not to certify the results of your equalization as to these complaints or any other to the County Clerks until after the Complain-

287 ants have time to look at your decision and determine their course.

Mr. Osborne: They have already been certified, Mr. Clark.

Mr. Clark: Won't you issue another certificate?

Mr. Osborne: You mean the values of this road?

Mr. Clark: I am speaking now of your certificates you send out of your equalization results as provided by statute.

Mr. Osborne: No, not yet.

Mr. Clark: May I ask that you not certify them out until after your final decision and we decide what course we wish to pursue.

Mr. Osborne: How long a time do you want?

Mr. Clark: The statute gives us ten days. We will get at it as soon as we learn your decision.

Mr. Osborne: You desire ten days then?

Mr. Clark: I do not want it certified out until we decide what course — will take.

Mr. Osborne: You mean ten days after the levy is made?

Mr. Clark: No.

Mr. Dressler: Ten days after you announce your decision.

Mr. Clark: The statute provides you shall certify the results of these hearings out to the County Clerks.

Mr. Lamaster: Are you through with Mr. Scribner?

288 Mr. Magaw: Yes.

Further cross-examination.

By Mr. Lamaster:

Q. How are these average market values taken, the daily average on the stock exchanges?

A. No, that is taken from the high and low, the *means* average for the year, high quotation and low quotation for the year.

Q. And split the difference between the two?

A. Yes sir.

Q. Do you know what had been the trend of the stocks during the latter part of the year 1921?

A. They had been both up and down during the year 1921. At one time it was as low as 114.

Q. Isn't it a fact that about the end of 1920 or early in 1921 was when stocks were about the lowest point, and from then on the trend has been upward?

A. They were lowest about the end of the year. I know I bought a little myself and I paid 119 for it early in the year and along later in the year it was down to 114, and at the end of the year it was about 134.

Q. And during the year 1922 the general trend, from January 1st to April 1st, was upward was it not?

A. I think it was a little, yes.

Q. So these figures hardly reflect conditions as they existed on April 1st, 1922?

A. Well, as nearly as may be.

Q. You haven't the actual figures for any part of the year 1922, have you?

—. ——.

A. Not here?

A. No sir.

Q. In the deductions what was the valuation placed on the stocks? That is, what is the method of valuing the stock?

A. Value deductions, the stocks and other securities that are deducted?

Q. Yes.

A. That is to take the book value as of December 31, 1921.

Q. Why was it you did not take the market value in making those deductions?

A. Because a great many of those securities were not on the market and could not be determined that way. When the stock went down however the Comptroller would write off losses; they wrote off quite a little loss in 1921. As you will observe the par value of that property deducted is $324,000,000.00, whereas as it is deducted it is only $290,000,000.00.

Q. Isn't it a fact a good many of these stocks held by the Union Pacific are other railway stocks?

A. Some other railway stocks——

Q. Listed on the New York Exchange.

A. About $23,000,000.00 of that is Liberty Bonds.

Q. For instance, a large amount of it is Baltimore & Ohio, stock, isn't it?

A. Quite a little. However this is a small proportion of the $324,000,000.00. The copy of the annual report I brought down with me has a lot of pages missing.

Q. If there is any information you wish to send down we are willing to put it in afterwards.

A. I wanted to answer your question.

Q. What amount did you compute your earnings on during the period of Federal control, Mr. Scribner?

A. During the period of Federal control the earnings reported here were from Federal operation, not corporate operation.

Q. I mean, what was the basis of the rental fixed between the Company and the Federal government?

A. That was on the net earnings for what was called "the test period," the three years ending June 30th, 1917.

Q. How many dollars was that?

A. For this system — was about thirty-four million, for the about eight thousand miles of railroad.

Q. That is, that was the annual rental?

A. Annual rental.

Q. Of course, we could compute back and figure how much
291 the valuation was. Could you state what the valuation was on which that figure was based?

A. I could not offhand. I have it at home and I filed here with the Board,—I think Mr. Osborne has it now—a statement on which I capitalized the earnings or capitalized the rental received from the Government to see how much it would come to per mile of railroad.

Q. If that is on file I think that will answer.

A. It would be a theoretical valuation, but the rental figure was fixed.

Q. What was the figure fixed by the Interstate Commerce Commission in Ex Parte 74 for the Union Pacific?

A. In Ex Parte 74 it figured about seventy thousand a mile. That is assuming that the valuation used in Ex Parte 74 for Western and Mountain Pacific groups, which was $8,100,000,000.00 was about eight and one-sixth per cent less than the property investment account of all that group, and using that for the Union Pacific System of the property investment account of the Union Pacific System and deducting eight and one-sixth per cent, as was done in Ex Parte 74, it would give us about seventy thousand a mile.

Q. That is per road mile?

A. Per roadway mile, not a track mile.

Q. That includes all of your roadway miles for single and
292 double track?

A. For the System, yes sir.

Mr. Lamaster: That is all.

Redirect examination.

By Mr. Magaw:

Q. Mr. Scribner, how much per mile does the assessment amount to for the year 1922 in Nebraska?

A. In Nebraska?

Q. Yes.

A. For the 1,225 miles it is very nearly eighty-five thousand a mile. It is eighty thousand two hundred and something assessed.

the Board, to which if you add the locally assessed property, would bring it up to about eighty-five thousand a mile.

Q. On the total mileage in the State?

A. Yes sir.

Q. That includes branch lines and all?

A. Branch lines and all.

Mr. Magaw: That is all.

Recross-examination.

By Mr. Lamaster:

Q. How much of that is single track and how much is double track?

A. We have about 470 miles of main line out of the 1,225 miles.

Q. Your main line east and west is all double track?

A. All the way through from Omaha to the west line of the State, yes sir.

Q. Have you other double track mileage besides that?

A. On the Union Pacific?

Q. Yes.

A. Yes, indeed.

Q. I mean in Nebraska.

A. None in Nebraska except on the main lines, but there is a little of what is called the "old main line," South Omaha to Lane, the old way, there is a little double track on that.

Q. Is there any third track in Nebraska?

A. I think they call a little of that "third track;" it is operated the same as side track or passing track though.

Mr. Lamaster: That is all.

Witness excused.

Mr. Clark: Do you offer that tabulation now?

Mr. Lamaster: Yes, we will offer that tabulation as Exhibit "18." When the final decision is made by the State Board there will be another draft of Exhibit "18," showing the final results which will be substituted in place of Exhibit "18."

Which said tabulation, marked Exhibit "18," so offered and received in evidence, is in the words and figures as follows:

Exhibit No, 18.

Tentative Outline by State Board as to Real Estate, 1922.

Counties.	Per acre abst. avge.	% inc. or dec.	Equal. value per a.	Real estate val. as ret.	Real estate value as equal.	Total value as returned.	Total value as equal.	Ave. per acre, 1921.
Arthur (See bottom)	.....	....	....	.....	.....	.....	.....	.....
1 Adams	71.83	none	71.83	$25,058,510	$25,058,510	$49,901,860	$49,901,860	$72.12
2 Antelope	48.78	↑2%	49.94	26,139,825	26,562,621	37,590,849	38,013,645	50.09
3 Banner	6.20	↑14%	7.06	2,796,243	3,187,717	3,443,613	3,835,087	7.30
4 Blaine	4.79	—3%	4.65	1,860,320	1,804,511	3,783,079	3,727,270	4.66
5 Boone	71.10	none	71.10	30,911,015	30,911,015	43,420,985	43,420,985	70.60
6 Box Butte	9.32	—6%	8.77	5,952,735	5,595,572	15,181,545	14,824,382	8.78
7 Boyd	42.06	↑3%	43.32	13,594,585	14,002,422	18,837,259	19,245,096	43.22
8 Brown	8.00	↑10%	8.80	5,887,665	6,476,431	10,307,960	10,896,726	8.92
9 Buffalo	41.95	↑10%	46.14	24,973,858	27,471,243	49,590,655	52,088,040	46.11
10 Burt	119.87	none	119.87	34,282,395	34,282,395	45,638,560	45,638,560	120.30
11 Butler	96.69	none	96.69	35,406,635	35,406,635	50,457,625	50,457,625	97.13
12 Cass	111.46	none	111.46	38,098,865	38,098,865	56,528,300	56,528,300	111.32
13 Cedar	83.35	↑16%	96.79	38,559,520	44,729,043	53,649,995	59,819,518	97.00
14 Chase	12.27	none	12.27	6,555,845	6,555,845	9,836,036	9,836,036	12.20
15 Cherry	4.57	↑16%	5.30	15,465,932	17,940,381	29,659,492	32,134,041	5.29
16 Cheyenne	22.86	none	22.86	16,573,525	16,573,525	36,709,890	30,709,890	22.30
17 Clay	77.74	none	77.74	27,785,480	27,785,480	42,203,435	42,203,435	77.69
18 Colfax	112.77	none	112.77	28,920,715	28,920,715	41,169,435	41,169,435	111.82
19 Cuming	110.40	↑12%	123.64	40,519,736	45,382,104	52,392,772	57,255,140	123.60
20 Custer	19.67	↑4%	20.45	30,994,767	32,234,557	49,242,417	50,482,207	20.49
21 Dakota "	.....	....	....	.....	.....	.....	.....	96.86
22 Dawes	10.31	↑1%	10.41	8,582,440	8,668,264	19,702,486	19,788,310	10.45
23 Dawson	38.27	↑7%	40.94	23,316,580	24,948,751	41,162,848	42,795,009	41.14
24 Deuel	25.06	↑4%	26.06	6,315,822	6,880,454	12,941,110	13,205,748	26.10
25 Dixon "	.....	....	....	.....	.....	.....	.....	82.10

26 Dodge	118.73	none	118.73	37,519,780	37,519,780	64,324,160	64,324,160	119.36
27 Douglas "	.....	....	....	.....	.....	.....	.....	144.05
28 Dundy	9.88	⅜6%	10.47	5,428,938	5,754,674	11,902,683	12,228,420	10.47
29 Fillmore	85.31	none	85.31	31,128,530	31,128,530	44,906,463	44,906,463	85.26
30 Franklin	38.39	none	38.39	13,608,610	13,608,510	21,250,325	21,250,325	38.84
31 Frontier	16.69	⅜2%	17.02	9,896,803	10,094,739	15,759,423	15,957,359	17.04
32 Furnas	30.87	—4%	29.64	14,949,635	14,351,650	26,664,600	26,066,615	29.72
33 Gage	80.19	none	80.19	43,406,575	43,406,575	71,709,425	71,709,425	79.91
34 Gardon	8.39	⅜17%	9.81	8,481,197	9,923,000	12,472,919	13,914,722	9.81
35 Garfield "	.....	....	....	.....	.....	.....	.....	13.23
36 Gosper	28.86	none	28.86	8,446,410	8,446,410	11,861,105	11,861,105	28.63
37 Grant	3.82	—6%	3.60	1,777,884	1,653,433	5,865,784	5,741,333	3.60
38 Greeley	36.07	⅜14%	42.14	12,995,210	14,814,539	19,371,570	21,190,899	42.29
39 Hall	57.91	⅜6%	61.38	19,476,417	20,645,002	44,936,262	46,134,847	61.55
40 Hamilton	86.73	none	86.73	29,572,230	29,572,230	43,103,785	43,103,785	86.68
41 Harlan	32.06	none	32.06	11,412,845	11,412,845	20,328,430	20,328,430	32.00
42 Hayes	10.46	⅜23%	12.86	4,505,500	5,541,765	6,213,046	7,249,311	12.87
43 Hitchcock	18.48	none	18.48	7,916,622	7,916,622	14,954,973	14,954,973	18.22
44 Holt	13.93	⅜16%	16.16	20,213,680	23,547,868	30,543,250	33,777,438	16.24
45 Hooker	3.70	⅜8%	3.99	1,567,056	1,692,420	4,267,324	4,392,688	3.99
46 Howard	45.58	none	45.58	16,024,915	16,024,915	25,913,982	25,913,982	45.71
47 Jefferson "	.....	....	....	.....	.....	.....	.....	69.67
48 Johnson "	.....	....	....	.....	.....	.....	.....	85.97
49 Kearney	50.47	none	50.47	16,173,925	16,173,925	24,982,895	24,982,895	50.93
50 Keith	12.53	⅜10%	13.78	7,943,020	8,737,322	17,233,192	18,027,494	13.48
51 Keya Paha	9.58	⅜8%	10.34	4,377,555	4,727,750	6,015,425	6,365,629	10.38
52 Kimball	17.37	⅜3%	17.89	10,677,105	10,939,418	18,742,915	19,063,228	17.88
53 Knox	48.24	⅜10%	53.06	32,208,840	35,429,724	45,290,002	48,510,886	53.26
54 Lancaster	101.22	none	101.22	52,486,135	52,486,135	170,339,640	170,339,640	100.40
55 Lincoln	8.47	⅜20%	10.16	12,930,695	15,516,114	32,346,385	34,902,404	10.09
56 Logan "	.....	....	....	.....	.....	.....	.....	8.45
57 Loup	6.02	⅜20%	7.70	2,070,925	2,650,784	2,819,495	3,399,354	7.73
58 Madison	86.23	none	86.23	31,168,300	31,168,300	53,009,645	53,009,645	86.72
59 McPherson "	.....	....	....	.....	.....	.....	.....	5.22

Tentative Outline by State Board as to Real Estate, 1922—Continued.

Counties.	Per acre abst. avge.	% inc. or dec.	Equal. value per a.	Real estate val. as ret.	Real estate value as equal.	Total value as returned.	Total value as equal.	Ave. per acre, 1921.
60 Merrick	64.79	—4%	62.20	18,152,305	17,426,213	31,831,191	31,105,099	61.70
61 Morrill "	.....	....	....	.....	.....	.....	.....	9.90
62 Nance	62.65	‡4%	64.52	17,538,884	18,064,050	24,746,759	25,272,925	64.63
63 Nemaha	94.88	none	94.88	23,830,650	23,830,650	33,899,810	33,899,810	95.38
64 Nuckolls "	.....	....	....	.....	.....	.....	.....	58.62
65 Otoe	100.09	‡5%	105.54	39,065,945	41,019,242	56,387,255	58,340,552	105.58
66 Pawnee	69.23	none	69.23	18,919,630	18,919,630	27,998,786	27,998,786	69.21
67 Perkins	15.23	‡6%	16.14	8,539,145	9,051,493	12,962,004	13,574,352	16.25
68 Phelps	49.45	none	49.45	16,662,375	16,662,375	27,009,000	27,009,000	49.42
69 Pierce	58.96	‡30%	76.64	21,514,945	27,969,428	31,330,685	37,785,168	76.78
70 Platte	98.45	none	98.45	41,825,505	41,825,505	61,702,285	61,702,285	99.20
71 Polk	97.41	none	97.41	26,583,700	26,583,700	35,854,434	35,854,434	96.99
72 Red Willow	22.27	—4%	21.38	9,607,800	9,223,488	20,700,289	20,315,977	21.29
73 Richardson "	.....	....	....	.....	.....	.....	.....	92.11
74 Rock	.....	....	....	.....	.....	.....	.....	9.05
75 Saline	93.57	none	93.57	34,021,369	34,021,369	51,087,759	51,087,759	93.41
76 Sarpy	.....	....	....	.....	.....	.....	.....	102.71
77 Saunders	104.07	none	104.07	49,148,655	49,148,655	69,510,311	69,510,311	104.26
78 Scotts Bluff "	.....	....	....	.....	.....	.....	.....	37.69
79 Seward "	94.30	none	94.30	33,879,860	33,879,860	47,995,150	47,995,150	94.17
80 Sheridan	7.15	‡3%	7.36	10,440,440	10,753,653	20,389,645	20,702,858	7.34
81 Sherman	35.13	none	35.13	12,340,280	12,340,280	19,723,939	19,723,939	35.58
82 Sioux	6.42	‡8%	6.93	7,653,350	8,265,618	12,190,888	12,803,156	6.91
83 Stanton	88.42	‡11%	98.14	24,328,000	27,004,080	30,061,941	33,338,021	98.16
84 Thayer	62.57	none	62.57	22,560,900	22,560,900	35,026,775	35,026,775	62.00
85 Thomas	3.85	‡23%	4.73	1,325,386	1,630,224	3,975,338	4,280,176	4.72
86 Thurston "	.....	....	....	.....	.....	.....	.....	98.08
87 Valley "	.....	....	....	.....	.....	.....	.....	39.51

88	Washington	119.07	‡6%	126.21	28,029,755	29,711,540	38,971,815	40,652,600	125.86
89	Wayne	105.85	none	105.85	29,749,891	29,749,891	39,353,988	39,353,988	105.82
90	Webster	44.65	none	44.65	16,054,265	16,054,265	25,806,245	25,806,245	44.85
91	Wheeler	12.10	‡9%	13.18	4,188,250	4,565,192	5,433,420	5,810,362	13.20
92	York	92.17	none	92.17	33,489,840	33,489,840	50,388,755	50,388,755	92.71
93	Arthur	4.23	‡3%	4.35	1,829,509	1,884,394	2,597,065	2,651,950	4.35

W. H. Osborne, State Tax Commissioner.
H. W. Scott, Deputy.

‡Increase.
—Decrease.
"Abstract not received.

296 Mr. Lamaster: I desire to ask Mr. Morgan a few questions on cross examination.

E. F. MORGAN, a witness heretofore called and duly sworn on behalf of Complainants, was recalled and testified as follows:

Cross-examination.

By Mr. Lamaster:

Q. In your form G, being Exhibit "7" before this Board, being the Amended Statement of the Chicago, Burlington & Quincy, you give dividends as cash $44,925,917.00, and then a stock dividend of $60,000,000.00. How much of this cash dividend was paid out of revenues of the year 1921 and how much was paid out of an accumulated surplus?

A. The income account shows that $19,595,025.26 was paid out of the current income of 1921, and the balance out of surplus.

Q. Now, what dividends did you pay, in percentage, during the year 1921?

A. You must remember that the capital stock, at the beginning of the year, was $110,839,100.00, and the first dividend of two per cent was on that.

Q. And then what dividends were declared subsequently during that year?

297 A. Well, there was the first dividend of two per cent on $110,000,000.00; then there was another dividend of five per cent on $170,000,000.00; another dividend of five per cent on $170,000,000.00, and fifteen per cent on $170,000,000.00.

Q. Now, in addition to these dividends was there anything passed to surplus out of the current revenues for that year?

A. Current income there was $6,014,948.11; that was the income balance transferred to profit and loss after the dividends that were charged to income of that year.

Q. The operating expenses include taxes, maintenance, repairs, renewals, but exclude additions and betterments?

A. Yes sir.

Q. You follow the Interstate Commerce Commission accounting rules in arriving at this figure?

A. Yes sir, absolutely.

Q. I note you include Nebraska Taxes $2,207,533.85 and U. S. Taxes $654,978.11. Why are the U. S. Taxes included there, Mr. Morgan?

A. The Interstate Commerce Commission rules provide that all taxes, both State, Municipal and Federal, are chargeable to railway tax accruals.

Q. How much of this is income tax? Can you tell?

A. Yes, of that $654,978.11, $63,209.49 is Federal capital stock tax and $591,768.61 income tax.

298 Q. Is there anything in the rules of the Interstate Commerce Commission to the effect that the income tax should be deducted?

A. The income tax, under the Interstate Commerce Commission's classification, is chargeable to railway tax accruals and deductible from income. All taxes except assessments for public improvements, that is chargeable to capital.

Q. Are any of these taxes you have mentioned here as Federal Income Taxes deducted from on individual returns of stockholders as being taxes paid at the source?

A. No sir. I don't exactly get the question.

Q. I mean to say this: That certain taxes are paid by corporations and then they are allowed to be deducted from individual returns as being taxes paid at the source. Are these taxes that you mention such taxes as that?

A. The income taxes we paid to the United States government on our own income as a corporation.

Mr. Lamaster: That is all with Mr. Morgan, and I believe that is all I care to ask any of the witnesses.

Witness excused.

299 Mr. Clark: Complainants will now offer in evidence the final order and judgment of this Board of Equalization for the taxes for this year A. D. 1922.

Which said order, so offered and received in evidence is attached hereto in the words and figures as follows, and same found at page 93 of this record.

Mr. Clark: I now want to ask the Board not to certify out under Section 4 of Article 11, under the Revenue Law, the result of these equalization hearings until the Complainants have had time to examine the final judgment entered in this case and determine the course to pursue. Within the ten days allowed by statute.

Mr. Lamaster: I suppose that is up to the Board, but I am satisfied they will give you that time.

The Chairman: Yes, if that is the requirement of the law. This hearing will now stand adjourned, subject to the call of the Board.

Hearing closed.

300 Whereas the Union Pacific Railroad Company, the Chicago, Burlington and Quincy Railroad Company, the Chicago and North Western Railroad Company, and the St. Joe & Grand Island Railroad Company, have filed a complaint with this Board, wherein they complain against the valuation heretofore fixed by this Board upon their property:

And whereas on the 25th day of July a full hearing was granted said railroads as requested in said complaints:

And whereas this Board has cited before it approximately 35 counties to show cause why the real estate of such counties should not be increased:

And whereas after a full hearing the Board entered a final order increasing by a percentum the real estate of 28 counties, and decreasing 11 counties, and making no change in 55 counties:

Therefore be it resolved that the complaints of each of the complaining railroad companies, and the requests therein made, be dismissed.

Upon motion the resolution was unanimously adopted.

Dated August 2, 1922.

301 **Reporter's Certificate.**

STATE OF NEBRASKA,
Lancaster County, ss:

I, John S. Taggart, Official Reporter Fourth Judicial District of Nebraska, do hereby certfiy that I reported in shorthand the proceedings and testimony before the Nebraska State Board of Equalization and Assessment in the above entitled matter on July 25th, 1922 and that the within and foregoing is a full, true and complete transcript of the evidence and proceedings, including all exhibits offered and received in evidence at said hearing, and that the copies of said exhibits included herein are true and correct copies of the originals thereof, and that said testimony and proceedings were correctly transcribed herein as the same appear in my shorthand notes taken at the time and place hereinabove stated.

—— ——, Official Reporter, Fourth Judicial District of Nebraska.

Order Settling Bill of Exceptions.

I hereby certify that the within and foregoing is a true, correct and complete transcript of all of the evidence offered and received and proceedings had upon the hearing of the above entitled matter, and includes the decision of the Board upon the applications herein.

And, now, upon the application of the Complainants railroad companies, the within bill of exceptions is allowed and settled as such and filed in said matter and ordered to be made a part of the record in said matter.

Dated this — day of ——, 1922. —— ——, Acting Chairman.

302 Before the State Board of Equalization and Assessment of the State of Nebraska.

In re Assessment and Equalization of the Property in the State of Nebraska of the Following Railroad-: ——.

Exhibit 12—Bill of Exceptions.

Transcript of Proceedings had Friday, July 22d, 1921.

Ex. 12 Sub. J. S. T.

John S. Taggart,

Official Reporter,

Fourth Judicial District,

Nebraska.

303 Before the State Board of Equalization and Assessment of the State of Nebraska.

In re Assessment and Equalization of the Property in the State of Nebraska of the Following Railroads: UNION PACIFIC RAILROAD COMPANY, ST. JOSEPH & GRAND ISLAND RY. CO., CHICAGO, ROCK ISLAND & PACIFIC RY. CO., MISSOURI PACIFIC RAILROAD CORPORATION IN NEBRASKA, CHICAGO & NORTHWESTERN RAILWAY CO., CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY CO., CHICAGO, BURLINGTON & QUINCY R. R. CO.

Appearances: Hon. D. M. Amsberry, Secretary of State, Presiding, in the absence of the Governor; Hon. George W. Marsh, Auditor of Accounts; Hon. D. B. Cropsey, Treasurer; Hon. W. H. Osborne, Jr., Tax Commissioner.

Mr. Byron Clark, Solicitor, C. B. & Q. R. R. Co.
Mr. C. A. Magaw, General Attorney, U. P. R. R. Co. and St. Joe & G. I. R. R. Co.
Mr. J. A. C. Kennedy, Attorney, Mo. Pac. Ry. Co.
Mr. Wymer Dressler, Attorney, C. & N. W. Ry.
Mr. E. P. Holmes, Attorney, C. R. I. & P. Ry. Co.

On Friday, July 22, 1921, the following proceedings were had in the above entitled matter:

304 Mr. Clark: In offering this evidence at this time I am making one record in behalf of each of the railroads separately, so that each road can have such use of it as it wishes to make in the future and all of the offers of evidence will be in behalf, separately, of each of these complainants,—Union Pacific Railroad Company,

St. Joseph & Grand Island Railway Company, Chicago, Rock Island & Pacific Railway Company, Missouri Pacific Railroad Corporation in Nebraska, Chicago & Northwestern Railway Company, Chicago, St. Paul, Minneapolis & Omaha Railway Company, and the Chicago, Burlington & Quincy Railroad Company.

The Chairman of the Board can advise us as to the——

The Chairman: That arrangement will be satisfactory.

Mr. Clark: I will first offer in evidence as Exhibit "A," from your secretary's record of 1920, page 250, commencing with the second line from the bottom of the page and continuing on page 251, down to the figures making a total of $360,741,825.00, it being the resolution of A. D. 1920 valuing and assessing the property of the
305 complainants herein by this Board.

Which said record, marked Exhibit "A," so offered and received in evidence is attached hereto as follows:

Exhibit A.

The following resolution was unanimously adopted:

Resolved: That we, the State Board of Equalization and assessment, in regular session held for the purpose of valuing and assessing the railroads in the State of Nebraska for the purpose of taxation of their property in the said state and having given due and full consideration to the returns furnished said Board by the several railroad companies, and having taken into consideration the main track, side track, spur track, warehouse tracks, road bed, right of way and depot grounds and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand and supplies, moneys, credits, franchises and all other property of said railroad companies and having taken into consideration the gross and net earnings of said railroads, the total amount expended in operation and maintenance, the dividends paid, the capital stock of each system or road and the market value thereof, and the total amount of secured and unsecured indebtedness, and from all the information which we are able to obtain do hereby ascertain, appraise, fix and assess for the purpose of general taxation the
306 full actual value of the property of each of the several systems or companies in the State of Nebraska, as hereinafter recited.

Chicago, Burlington & Quincy Railroad Company	$131,765,605
Union Pacific Railroad Company	90,468,220
Chicago & Northwestern Railway Company	40,354,110
Chicago, St. Paul, Minneapolis & Omaha Railway Co.	13,744,305
Chicago, Rock Island & Pacific Railway Company	11,503,355
Missouri Pacific Railway Company	12,806,335
St. Joseph & Grand Island Railway Company	3,973,670
Mason City & Fort Dodge Railway Co.	540,000
Omaha & Lincoln Railway & Light Co.	99,450
Omaha Bridge & Terminal Railway Co.	548,000

Omaha, Lincoln & Beatrice Ry. Co.	91,800.00
Omaha & Southern Interurban Railway Co.	90,000.00
Illinois Central Railway Company	54,000.00
Wabash Railroad Company	54,000.00
Chicago, Milwaukee & St. Paul Ry. Co.	108,000.00
Atchison, Topeka & Santa Fe Ry. Co.	15,000.00
Kansas City & Northwestern Railway, K. S. L. to Virginia	525,875.00
	$306,741,825.00

307 Mr. Clark: I now offer in evidence Exhibit B excepting the last two columns thereon. The headings so excepted being "% of average value" and "% of increase or decrease by St. Bd." It is admitted that this is the statement issued by Mr. Osborne, as Secretary of the State Board, demonstrating its official results as set forth in the four first columns.

Which said document, marked Exhibit "B," so offered and received in evidence, is attached hereto as follows:

County.	Average transfer price.	Average value adjusted.	Returned to St. board.	Equalized by St. bd.	% of average value.	% of increase or decrease by St. bd.
Cass	154.00	219.00	120.45	132.49	60	Inc. 10
Nemaha	162.00	165.50	132.28	119.07	71	Dec. 10
Otoe	150.00	173.64	138.22	124.40	71	Dec. 10
Richardson	151.00	151.22	106.34	106.34	70	0
Sarpy	110.00	175.53	123.85	123.85	70	0
Douglas	267.70	257.08	185.95	167.36	65	Dec. 10
Burt	164.00	192.94	177.67	151.02	78	Dec. 15
Cuming	171.00	207.58	158.89	143.01	68	Dec. 10
Dodge	196.00	207.65	140.32	140.32	67	0
Washington	214.00	204.13	197.04	157.25	77	Dec. 15
Wayne	174.73	174.04	178.37	133.78	76	Dec 25
Dakota	163.00	149.37	112.92	112.92	75	0
Thurston	163.00	175.38	158.60	134.81	70	Dec. 15
Cedar	132.00	146.88	135.00	114.75	78	Dec. 15
Dixon	No Sales	Transfer	99.00	108.90	..	Inc. 10
Madison	129.00	128.74	120.63	102.54	79	Dec. 15
Pierce	124.00	126.49	86.12	90.42	71	Inc. 5
Stanton	138.00	144.25	115.80	110.05	70	Dec. 5
Butler	195.65	194.24	105.29	131.60	67	Inc. 25
Colfax	194.79	192.95	159.94	132.45	63	Dec. 15
Platte	157.31	163.64	111.41	122.47	74	Inc. 10
Polk	103.01	103.00	108.20	129.84	78	Inc. 20
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Seward	162.77	172.08	100.69	120.72	70	Inc.	20
Gage	123.00	129.24	87.00	91.35	70	Inc.	5
Johnson	122.00	129.26	112.46	95.60	73	Dec.	15
Pawnee	113.22	108.38	80.96	80.96	74		0
Jefferson	107.80	113.12	81.33	81.33	71		0
Nuckolls	98.24	97.90	61.85	71.12	72	Inc.	15
Thayer	95.00	98.44	85.21	72.43	73	Dec.	15

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Fillmore	130.70	136.52	99.51	99.51	72		0
Hamilton	140.80	142.07	101.25	101.25	71		0
York	150.00	159.27	103.12	108.27	67	Inc.	5
Adams	112.33	110.36	84.48	84.48	76		0
Clay	126.00	133.73	107.35	96.62	72	Dec.	10
Hall	99.06	103.47	65.18	74.91	72	Inc.	15
Merrick	108.20	117.14	66.95	76.98	65	Inc.	15
Boone	105.00	128.07	78.96	82.90	64	Inc.	5
Nance	115.00	119.34	75.85	79.64	66	Inc.	5
Antelope	79.00	83.18	80.45	64.36	77	Dec.	20
Boyd	Sale Value	Not Reliable	51.54	51.54	..		0
Knox	85.00	91.25	62.63	62.63	73		0
Holt	41.00	37.41	20.59	24.69	65	Inc.	20
Garfield	21.00	29.40	14.47	17.33	58	Inc.	20
Loup	14.43	13.61	8.35	9.17	67	Inc.	10
Wheeler	23.00	27.76	15.37	16.90	60	Inc.	10
Brown	17.00	20.40	10.50	11.55	56	Inc.	10
Keya Paha	21.00	22.50	12.65	12.65	56		0
Rock	No Sale	Transfers	10.68	10.68	..		0

EXHIBIT "B."—*Continued.*

County.	Average transfer price.	Average value adjusted.	Returned to St. board.	Equalized by St. bd.	% of average value.	% of increase or decrease by St. bd.
Greeley	63.00	73.86	48.82	48.82	65	0
Howard	76.76	81.51	53.62	53.62	65	0
Sherman	60.74	58.80	46.06	46.06	78	0
Valley	68.18	70.89	56.09	47.65	67	Dec. 15
Buffalo	90.00	96.73	45.96	55.15	56	Inc. 20
Dawson	64.50	65.24	60.71	48.57	74	Dec. 20
Kearney	76.00	87.52	67.06	60.36	68	Dec. 10
Phelps	77.00	89.21	56.52	59.32	66	Inc. 5
Franklin	54.00	64.40	51.70	46.53	70	Dec. 10
Harlan	57.00	55.20	38.03	38.03	68	0
Webster	67.00	73.23	58.71	52.83	72	Dec. 10
Furnas	40.00	50.40	31.42	34.56	68	Inc. 10
Gosper	41.00	49.41	37.57	33.82	68	Dec. 10
310						
Frontier	31.00	29.74	19.98	19.98	66	0
Red Willow	30.00	33.80	27.99	25.20	74	Dec. 10
Chase	35.00	30.62	12.00	16.80	54	Inc. 40
Dundy	18.00	27.90	12.32	17.74	52	Inc. 20
Hayes	20.00	18.85	14.82	12.60	66	Dec. 15
Hitchcock	27.45	30.85	23.58	21.23	68	Dec. 10
Custer	45.00	49.98	22.25	28.92	57	Inc. 20
Keith	29.00	26.42	15.10	17.36	65	Inc. 15

Lincoln	22.00	27.81	9.23	13.84	49	Inc.	50
Perkins	32.27	32.23	21.64	21.64	68		0
Arthur	18.60	8.99	.....	.....	..	.....	
Logan	14.00	14.28	14.02	9.82	68	Dec.	30
McPherson	8.00	8.66	6.79	6.11	70	Dec.	10
Blaine	6.90	7.53	5.48	5.48	74		0
Cherry	8.00	10.80	7.82	7.82	72		0
Grant	7.58	7.09	3.62	4.34	61	Inc.	20
Hooker	7.00	8.05	4.78	4.78	59		0
Thomas	7.00	11.90	5.70	6.84	57	Inc.	20
Garden	12.00	15.60	13.50	11.49	73	Dec.	15
Sheridan	17.55	15.10	8.63	8.63	57		0
Cheyenne	49.00	52.92	26.27	31.52	59	Inc.	20
Deuel	56.08	59.79	30.72	33.79	58	Inc.	10
Kimball	29.56	30.25	21.11	21.11	69		0
Morrill	22.00	24.04	11.68	14.01	58	Inc.	20
Banner	28.00	13.57	11.85	9.48	70	Dec.	20
Sioux	15.00	15.60	8.71	8.71	55		0
Box Butte	27.49	23.42	8.55	11.11	47	Inc.	30
Dawes	32.65	19.96	12.08	12.08	60		0
Scotts-Bluff	83.00	111.39	40.00	48.00	62	Inc.	20

311 Mr. Clark: We now offer in evidence Exhibit "C" being two sheets, consisting of four columns. It is admitted that this is a statement issued by the Secretary of this Board showing its official results after the equalization in 1920, the third column thereof giving the per cent of average value accurately and of increase or decrease which is excepted on Exhibit "B."

Which said document marked Exhibit "C" so offered and received in evidence, is attached hereto as follows:

312 **Exhibit "C."**

County.	Returned to State board.	Equalized by State board.	% increase or decrease.	Assessed total value as equalized.
Cass	120.45	132.49	Inc. 10	13,803,005.00
Nemaha	132.28	119.07	Dec. 10	8,735,761.00
Otoe	138.22	124.40	" 10	13,971,091.00
Richardson	106.34	106.34	0	11,075,880.00
Sarpy	123.85	123.85	0	6,754,989.00
Douglas	185.95	167.36	Dec. 10	70,546,063.00
Burt	177.67	142.14	Dec. 20	11,818,680.00
Cuming	158.89	143.01	" 10	13,679,147.00
Dodge	140.32	140.32	0	15,548,027.00
Washington	185.00	148.00	Dec. 20	10,256,661.00
Wayne	178.37	133.78	" 25	10,338,675.00
Dakota	112.92	112.92	0	5,185,092.00
Thurston	158.60	134.81	Dec. 15	7,379,834.00
Cedar	135.00	114.75	Dec. 15	14,987,748.00
Dixon	99.00	99.00	0	8,585,203.00

[illegible]dison	120.63	102.54	Dec. 15	13,060,427.00
Pierce	86.12	90.42	Inc. 5	9,179,116.00
Stanton	115.90	115.90	0	8,366,290.00
Butler	105.29	126.34	Inc. 20	13,180,332.00
Colfax	159.94	132.45	Dec. 15	9,980,573.00
Platte	111.41	116.98	Inc. 5	14,738,513.00
Polk	108.20	113.61	" 5	8,754,591.00
Saunders	116.90	128.59	" 10	17,137,044.00
Lancaster	121.72	115.67	Dec. 5	37,800,358.00
Saline	129.18	109.81	" 15	12,057,343.00
Seward	100.60	110.66	Inc. 10	11,401,122.00
Gage	87.00	91.35	Inc. 5	16,473,344.00
Johnson	112.46	95.60	Dec. 15	6,621,776.00
Pawnee	80.96	80.96	0	6,928,784.60
Jefferson	81.33	81.33	0	9,803,037.00
Nuckolls	61.85	68.03	Inc. 10	7,437,666.00
Thayer	85.21	72.43	Dec. 15	8,397,079.00
Fillmore	99.51	99.51	0	10,555,957.00
Hamilton	101.25	101.25	0	10,186,695.00
York	103.12	108.27	Inc. 5	12,878,200.00
Adams	84.48	84.48	0	11,840,908.00
Clay	107.35	91.25	Dec. 15	10,190,014.00
Hall	65.18	71.69	Inc. 10	10,402,505.00
Merrick	66.95	73.64	" 10	7,462,622.00

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EXHIBIT "C."—*Continued.*

County.	Returned to State board.	Equalized by State board.	% increase or decrease.	Assessed total value as equalized.
Boone	78.96	82.90	" 5	10,362,197.00
Nance	75.85	79.64	" 5	6,314,188.00
Antelope	80.45	60.34	Dec. 25	9,479,913.00
Boyd	51.54	51.54	0	515,981.00
Knox	62.63	62.63	0	11,634,625.00
Holt	20.59	20.59	0	8,779,661.00
Garfield	14.47	15.91	Inc. 10	1,686,316.00
Loup	8.35	9.17	" 10	907,602.00
Wheeler	15.37	15.37	0	1,221,373.00
Brown	10.50	10.50	0	2,713,585.00
Keya Paha	12.65	12.65	0	1,711,257.00
Rock	10.68	10.68	0	2,044,726.00
Greeley	46.06	41.46	0	4,595,417.00
Howard	53.62	53.62	0	6,254,184.00
Sherman	46.06	41.46	Dec. 10	4,595,417.00
Valley	56.09	47.65	" 15	5,598,583.00
Buffalo	45.96	55.15	Inc. 20	11,819,308.00
Dawson	60.71	48.57	Dec. 20	10,870,647.00
Kearney	67.96	60.36	Dec. 10	6,216,315.00

Franklin	38.03	38.03	0	4,952,979.00
Webster	58.71	52.83	Dec. 10	6,316,696.00
Furnas	31.42	34.56	Inc. 10	5,934,518.00
Gosper	37.57	33.82	Dec. 10	3,013,554.00
314				
Frontier	19.98	19.98	0	3,959,709.00
Red Willow	27.99	25.20	Dec. 10	4,844,291.00
Chase	12.00	14.40	Inc. 20	2,496,192.00
Dundy	12.32	12.32	0	3,071,627.00
Hayes	14.82	14.82	0	1,803,187.00
Hitchcock	23.58	21.23	Dec. 10	3,487,375.00
Custer	22.25	24.47	Inc. 10	12,352,899.00
Keith	15.10	16.61	Inc. 10	4,424,130.00
Lincoln	12.56	15.70	Inc. 25	8,049,580.00
Perkins	21.64	21.64	0	3,527,504.00
Arthur	.....	.....	.....	.....
Logan	14.02	9.82	Dec. 30	1,162,647.00
McPherson	6.79	6.79	0	931,141.00
Blaine	5.48	5.48	0	883,410.00
Cherry	7.82	6.26	Dec. 20	8,624,597.00
Grant	3.62	4.34	Inc. 20	1,372,135.00
Hooker	4.78	4.78	0	1,010,842.00
Thomas	5.70	5.70	0	1,056,124.00
Garden	3.50	11.49	Dec. 15	3,577,582.00
Sheridan	8.63	8.63	0	5,047,206.00

EXHIBIT "C."—*Continued.*

County.	Returned to State board.	Equalized by State board.	% increase or decrease.	Assessed total value as equalized.
Cheyenne	26.27	26.27	0	6,805,501.00
Deuel	30.72	30.72	0	3,152,519.00
Kimball	21.11	21.11	0	4,234,492.00
Morrill	11.68	11.68	0	3,898,329.00
Banner	11.85	11.85	0	1,253,026.00
Sioux	8.71	8.71	0	3,218,587.00
Box Butte	8.55	10.26	Inc. 20	3,176,191.00
Dawes	12.08	12.08	0	4,543,355.00
Scottsbluff	40.00	44.00	Inc. 10	6,812,826.00
Assessed Grand Total				$775,949,730.00

315 Mr. Clark: Complainants offer in evidence Exhibit "D," being a plan and explanation of procedure of this Board, by its Secretary, and also by Mr. Bross, Secretary of the Department of Finance, referring to the equalization of the year 1920. It is also admitted that Exhibit "D" is a plan finally adopted by this Board and followed in the equalization of A. D. 1920.

Which said document, marked Exhibit "D," so offered and received in evidence is attached hereto as follows:

Exhibit D.

"To the State Board of Equalization and Assessment:

In accordance with the request of your Board and in compliance with the motion passed at the meeting of the County Assessors and others representing the different counties of the State, a tentative plan of equalization between the counties of lands and improvements is herewith submitted for your consideration:

Before the assessment period began, a list of transfers of lands in the different counties, from July 1, 1918 to July 1, 1919, was secured from the proper county officials. The list as sent in gave the number of transfers, the description of the land, number of acres, consideration, and 1919 assessed value of the same acres.

When these lists were received, they were carefully checked over and transfers which plainly showed they were not bona fide
316 sales were not used in compiling the average sale value for the county. These tabulations showing the average sale value for each precinct were furnished to each precinct and county assessor and they were instructed by the Department and by the Association of County Assessors to follow the law and fix the assessed value of all lands and improvements, as well as all other property, at the actual cash market value in the ordinary course of trade.

For the purpose of equalization between counties, it would hardly have been fair and just to take the average sale value as shown by the transfers. Good land might have been selling in one county while a cheaper grade of land was selling in another county. To correct this discrepancy, the assessed value for 1919 of the lands shown on the transfers was compared with the average assessed value of the county and this ratio was applied to the average sale value as shown in the transfers to establish the sale value per acre of the county which is shown in the second column of the prepared tabulation.

For instance, the average sale value of the transfers for Douglas county showed a sale value of $267.70 and these same acres were assessed for an average of $100.90. The average assessed value of the whole county was $96.90. To establish the sale value of Douglas County 96.90—100.90 of $267.70 is taken which gives $257.08 as the sale value. In other words, as the assessed valuation of the lands sold is to the consideration shown by the transfers, so the assessed valuation of the entire county is to the selling value thereof.

The average value was established as above stated for practically each county, and this was used as the basis for the suggested equalization. In two counties, the list of transfers was never furnished and in one or two other instances, the lists furnished were not complete, or plainly showed that they were not reliable.

This method of establishing the average value per acre for a county has long been used by the Tax Commission of Wisconsin and has also been adopted by the Tax Commission of Minnesota.

The use of sales records and the adjusted average value for equalization purposes between counties makes a uniform and re-
317 liable plan which should fairly and justly equalize the real estate assessment between counties. The relative assessment of the different grades of land within a county cannot be considered by the state board. The precinct assessors, county assessors and the County Boards determine the different grades of land within a county and assess them accordingly. The State Board only deals with the average of the county as compared with the average of the other counties of the state.

As has been stated, each county and precinct assessor was instructed to follow the law and, with all the information he could secure, including the record of the sale averages, assess all real estate and improvements at the actual market value.

The abstracts of assessment have been received covering lands and improvements for all the counties except Arthur. The returns show that the precinct assessors and other local assessing officials throughout the State have placed a value on lands and improvements which average over 68% of the average value as established by the ratio process based on actual sales. It would seem only fair and just that the State Board would accept this average valuation established by almost 2,000 precinct assesors and in equalizing the land and improvements between the counties, maintain, as nearly as possible, for each county, an assessed actual valuation of 68% of the actual value as established by the ratio process.

The suggested equalization has been carried out with this end in view and the percentages shown in column five approximate 68%. In preparing the tabulation, adjoining counties have been grouped together for comparison purposes.

In counties where the assessment was returned at approximately 68%, no change has been made. In some counties, the equalization to the 68% average would have made so great a percentage of change that it would have, without doubt, established within that county an unfair assessment of lands and improvements in comparison with other classes of property. As the sales are for only one year, in some cases it has seemed wise to take other information into consideration in equalizing some of the counties.

318 As directed by your Board yesterday, the counties where an increase is contemplated, have been notified and August 6th was set by your Board for hearing any protest. Besides advising counties where a raise is suggested, the tabulation showing the proposed changes by the State Board have been sent to the clerks, assessors and county boards of all counties.

If the different grades of land within a county have been properly equalized by the county officials, obviously no injustice is done any county or taxpayer, if the lands and improvements are equalized as between counties on the basis of actual valuation as determined by the ratio process from actual sales. Courts recognize the price paid for similar property in the vicinity as the best evidence of value. A normal sale represents the judgment of both purchaser and seller as to the value of the property sold—one parts with his money and the other with his property on the basis of the consideration paid. When the sales cover a year's period and are averaged for each county and for the State; and when the assessed valuation of the lands sold is compared with the average assessed valuation of the county, no injustice will be done any county in establishing this basis for equalization purposes. Philip F. Bross, Secretary Department of Finance. W. H. Osborne, Jr., Secretary State Board of Equalization.

Exhibit "D."

319 Mr. Clark: Complainants offer in evidence Exhibit "E," being a statement by this Board of the results of its 1920 equalization. It is admitted that the facts herein contained are true.

Which said document, marked Exhibit "E," so offered and received in evidence is attached hereto as follows:

320 **Exhibit "E."**

Statement by the State Board of Equalization.

In the matter of equalization between counties, the State Board has adhered to the early announced plan of accepting for valuation purposes the average value placed on lands and improvements by the precinct and county assessing officials. For equalization between counties, the value returned by the assessing officials of each county has been compared with the average real value, as established by the ratio process, based on bona fide sales from July 1, 1918, to July 1, 1919. The equalization of the counties on the basis of the sale average was requested of the Board at the meeting of the assessing officials of the Counties held July 20th, 1920. The ratio process, used in correcting the sale averages, is the plan used by Wisconsin for a number of years, and Minnesota and other states have adopted the same plan.

Under this plan of equalization, the State Board has the combined judgment, as to value, of the assessing officials of the counties and of the buyers and sellers of real estate for a year's period. The year taken was previous to the land boom and does not cover the period of the highest prices.

The valuations as returned by the County Boards averaged 68% of the real value, as determined by the ratio process, and the State Board adopted this 68% as the basis for equalization purposes.

The Board has recognized throughout that land sales represent more or less speculative value, and for this reason it would see that the per cent taken of the real value is a just valuation for assessment purposes.

The returns from the counties were either increased or decreased as was found necessary, to approximate the 68% of the real value. In most cases, where the returns came in near the 68% average, no change was made. In some cases it was felt a decrease, large enough to bring the returns to the 68% average, might be unfair and interfere with the valuation necessary for the county levy. In other cases, it appeared that an increase, large enough to bring a county up to the 68% average, might be unjust and unreasonable.

That the Board has adhered very closely to the above plan is shown by the fact that the average real value, as determined by the ratio process, for the state was $94.33, and the average value for assessment purposes $64.98, or 68%.

Under this plan, the Board has accepted and adopted the average valuation of the local assessing officials. In making this equalization the State Board has decreased the total value of lands and improvements of the State $91,317,440.00 or $18,263,549.00 assessed value. The record shows that the State Board in 1916, increased the value of lands and improvements when they made the equalization, while this Board, as above stated, has decreased the total assessed value $18,200,000.00.

After the equalization by the State Board, some of the more important classes of property show the following increases for
321 the four year perod, 1916-1920:

	1916.	1920.	Per c... Increa...
Lands and Improvements..	$266,460,319	$433,645,488	62
Lots and Improvements....	79,567,452	110,984,397	39
Money on Land.....	5,508,665	11,323,775	105
Automobiles.....	4,192,375	15,391,906	266
Merchandise.....	10,345,525	19,814,314	91
Value of Interest on State Lands.....	511,686	738,884	44
Improvemer... Leased Lands..	1,313,042	1,726,729	31
Hogs	3,099,528	5,782,335	86
Sheep	143,007	461,788	189
Horses	12,985,586	11,729,435	(Decrea...
Cattle	15,829,806	22,995,883	45
Mules	1,958,433	2,131,812	
Total Live Stock....	$34,016,370	$43,041,253	26
Shares in Bank Stock.....	7,718,128	10,487,057	35
Total Personal Property.....	$154,834,316	$231,319,875	49
Grand Total	$500,873,016	775,949,730	55

During the six years previous to 1919 the increase of total assessed value of all property was 20%. During that same period of six years, the assessed valuation of railroads was not increased by the State Board as then composed, except a small amount—$1,026,125, due to increased mileage. This year, the assessed valuation of the railroads was increased by $5,500,282.00 and the terminal assessments have been increased about the same percentage as the town property.

The following table will show the assessed valuation of railroads for the last eight years, and that the only material increase is the raise given by the State Board this year:

1913.....	$55,829,328.00	1917.....	$56,855,453.00
1914.....	55,945,074.00	1918.....	56,855,453.00
1915.....	55,945,074.00	1919.....	56,867,503.00
1916.....	56,833,234.00	1920.....	61,367,785.00

In this connection, it is interesting to note the average per mile assessed valuation of railroads in the surrounding states. The following table shows plainly that the railroads are assessed at a greater value in Nebraska than in the other states:

	Northwestern.	Union Pacific.	Burlington.
Nebraska	37,975	74,711	46,040
Kansas.....	.....	42,000	25,600
Colorado	.....	40,732	47,218
Wyoming	27,022	52,000	33,179
South Dakota	30,500	.....	40,580
North Dakota	24,650		
Illinois	42,500		
Iowa	38,500		

322 (Wyoming figures are for 1919. Others for 1920.)

(The double track and other improvements on the Northwestern in Illinois and Iowa accounts for the higher valuation in those states.)

The increase in valuation this year need not bring about any material increase in taxes. Except for possibly certain fixed levies, tax levies for every tax subdivision should be reduced so that only the necessary revenue will be raised. The State Board has no control over local levies but if local authorities reduce the tax levies based on the increased valuation over 1919, there should be no great increase in taxes paid this year over 1919. It should be borne in mind that only 19 cents out of every dollar of tax goes to the support of the state government, while 81 cents is for local purposes.

Exhibit "E."

323 Mr. Clark: Complainants now offer in evidence Exhibit "F," which is admitted to be an accurate copy of the resolution adopted by the State Assessors March 19th, 1921, and that the

latter half of the page contains the instructions issued and given to each of the County Assessors of the State under said resolution.

Which said document, marcker Exhibit "F" so offered and received in evidence, is attached hereto as follows:

324 **Exhibit "F."**

State of Nebraska,

Department of Finance,

Bureau of Revenue and Taxation,

Lincoln.

To the county assessor addressed:

Resolution Adopted at State Assessors' Meeting March 18, 1921.

At a meeting of the County Assessors held at Lincoln, Nebraska on March 18th, 1921, the following resolution introduced by Harry W. Scott of Pawnee City, was adopted:

Whereas, There has been an expression representing the sentiment of sixty-four Counties and the result of such expression seems to average fifteen per cent reduction under 1920 real estate values,

Therefore, Be it resolved that it be the sense of this meeting that the aggregate returns of the value of real estate in each county be returned to the State Board at not to exceed a fifteen per cent reduction.

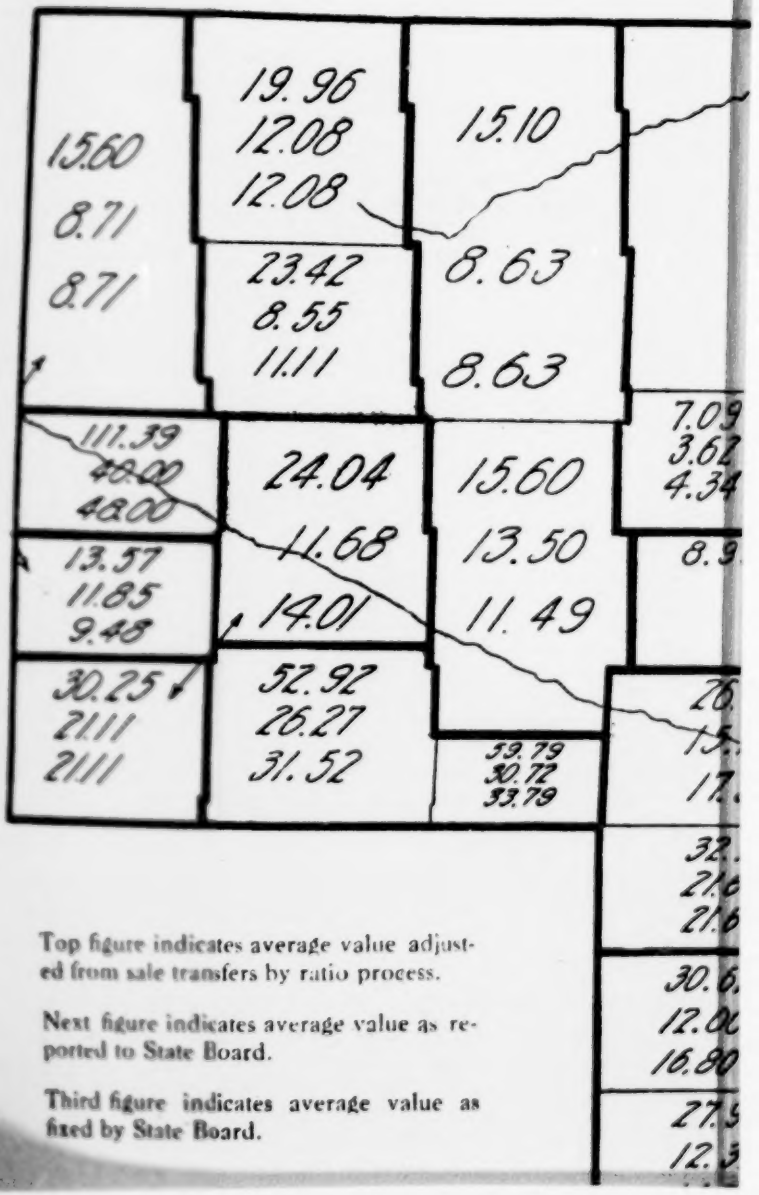
It being understood that this shall in no way be binding upon any county, but merely suggests a uniformity of action.

Dated this 19th day of March, 1921. G. L. Mumford, Sec'y-Treas.

The above and foregoing is a verbatum copy of a resolution adopted by the County Assessors of the State at their meeting held in the City of Lincoln, on March 18th, 1921, and it is requested by this department that you read the resolution over carefully, so that the result of their labors will be in accordance with the thought of the conference. We very much desire to avoid the neces-

325 sity of being compelled to again equalize to any great extent by counties this year, feeling as we do, that we have a very good equalization over the State at this time, but where the occasion demands the State Board will not shirk its duty to fairly and equitably raise or lower any county to the end that each bears its just relation, one to the other.

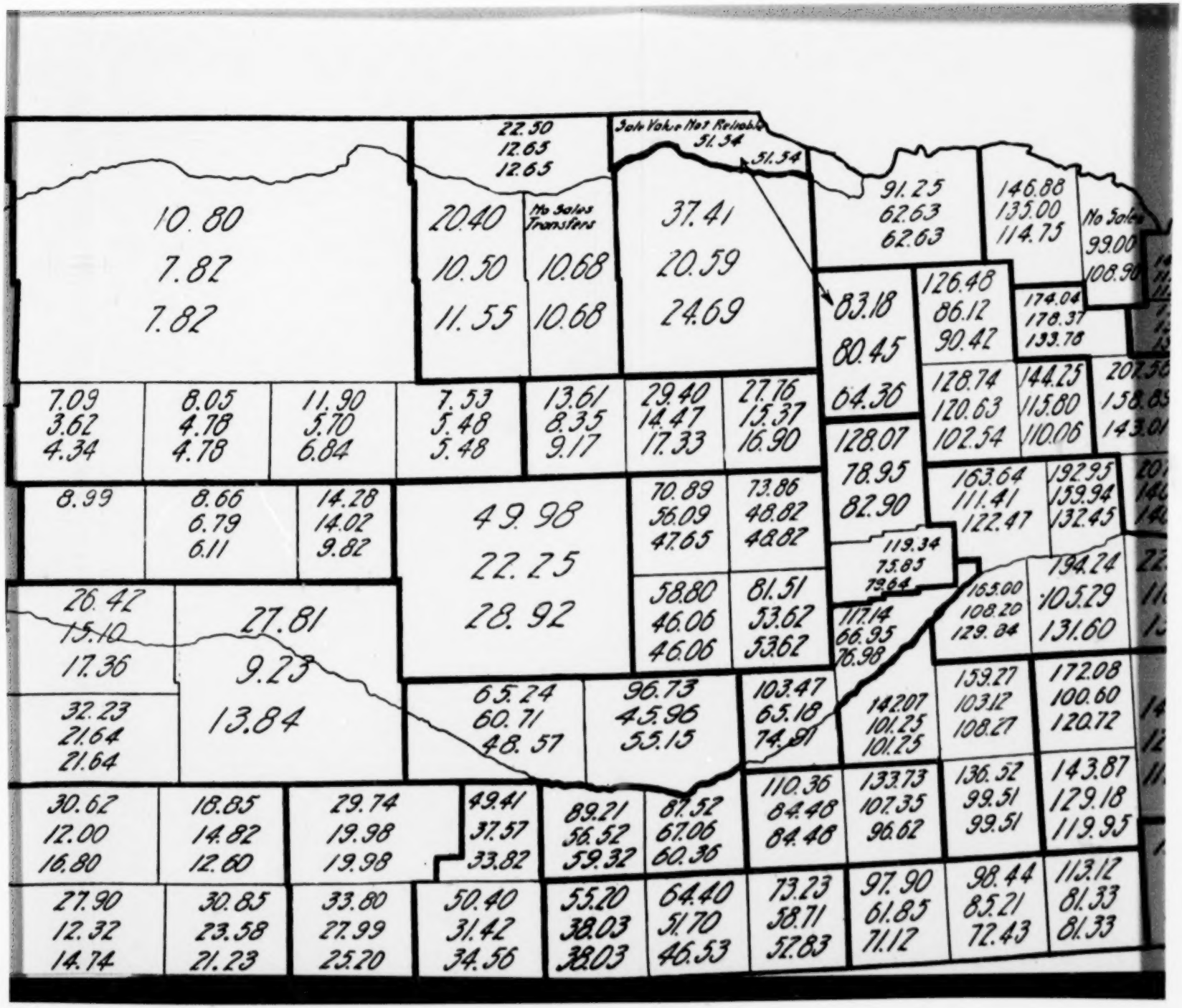
The unexpected passage of this emergency law makes it impossible for this department to follow up any figures to assist you and you will have to rely on last year's figures, together with your knowledge of your local county and in addition to this, follow the instructions from this department and the law governing your duties. Respectfully submitted, Philip F. Bross, Secretary, Department of Finance. W. H. Osborne, Commissioner.



Top figure indicates average value adjusted from sale transfers by ratio process.

Next figure indicates average value as reported to State Board.

Third figure indicates average value as fixed by State Board.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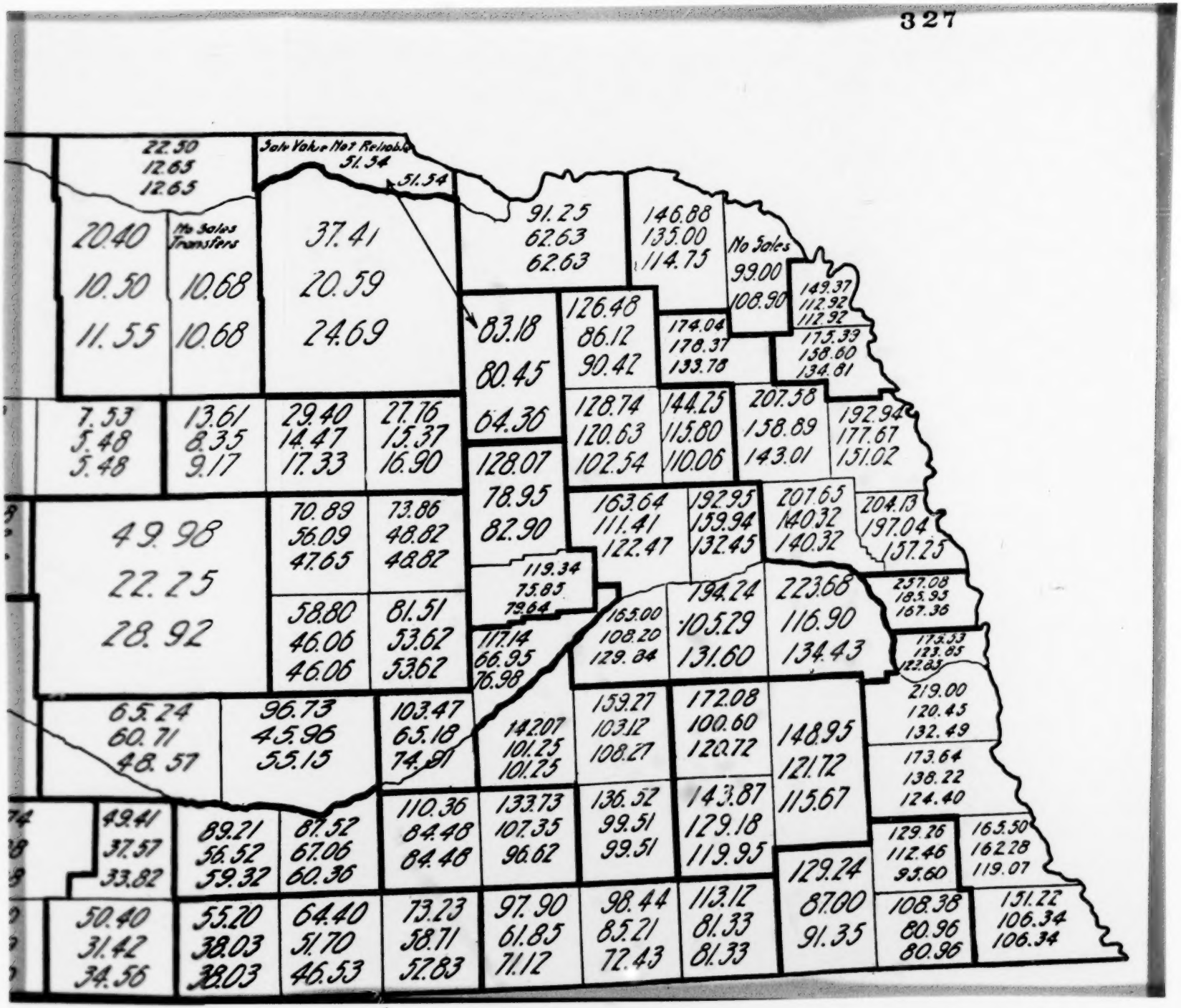
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49.41
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89.21
56.52
59.32
87.52
67.06
60.36
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326 Mr. Clark: Exhibit "G" is now offered in evidence, being a skeleton map of the State of Nebraska, showing the exterior boundary lines of each county therein, each space representing a county having figures thereon which are explained by the legend being three notes in the lower left hand corner of the sheet marked as Exhibit "G." This sheet being subject to revision and correction by Mr. Osborne.

Which said document, marked Exhibit "G," so offered and received in evidence, is attached hereto as follows:

(Here follows Exhibit "G," marked page 327.)

328 Mr. Clark: Complainants now offer in evidence Exhibit "H," being the resolutions adopted by this Board assessing and valuing their respective railroads and the properties thereof, for the year A. D. 1921, found in the Secretary's record on pages 277 and 278.

Which said document, marked Exhibit "H," so offered and received in evidence, is attached hereto as follows:

329 **Exhibit "H."**

The following resolution was adopted:

Resolved: That we, the State Board of Equalization and Assessment, in regular session held for the purpose of valuing and assessing the railroads in the State of Nebraska for the purpose of taxation of their property in the said state and having given due and full consideration to the returns furnished said Board by the several railroad companies, and having taken into consideration the main track, side track, spur track, warehouse tracks, road bed, right of way and depot grounds and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand and supplies, moneys, credits, franchises and all other property of said railroad companies and, having taken into consideration the gross and net earnings of said railroads, the total amount expended in operation and maintenance, the dividends paid, the capital stock of each system or road, and the market value thereof, and the total amount of secured and unsecured indebtedness, and from all the information which we were able to obtain do hereby ascertain, appraise, fix and assess for the purposes of general taxation the full actual value of the property of each of the several systems or companies in the State of Nebraska, as hereinafter recited:

330

Chicago, Burlington & Quincy Railroad Co...	$131,639,875.00
Union Pacific Railroad Company	90,469,245.00
Chicago & Northwestern Railway Co.	40,350,715.00
Chicago, St. Paul, Min. & Omaha Ry. Co.	13,698,855.00
Chicago, Rock Island & Pacific Ry. Co.	11,502,985.00
Missouri Pacific Railway Co.	12,806,140.00

St. Joseph & Grand Island Railway Co.	3,971,895.00
Mason City & Fort Dodge Railway Co.	540,000.00
Omaha & Lincoln Railway & Light Co.	99,450.00
Omaha Bridge & Terminal Railway Co.	648,000.00
Omaha, Lincoln & Beatrice Railway Co.	101,805.00
Omaha & Southern Interurban Railway Co.	90,000.00
Illinois Central Railway Co.	54,000.00
Wabash Railroad Co.	54,000.00
Chicago, Milwaukee & St. Paul Railway Co.	108,000.00
Atchison, Topeka & Santa Fe Railway Co.	15,000.00
Kansas City & Northwestern Ry. K. S. L. to Virginia	487,855.00
North Platte Valley Railway Co.	376,552.00
Total	$306,960,372.00

331 Mr. Clark: Complainants offer in evidence Exhibit "I" for the use of either party hereto, the same being instructions in A. D. 1921 to the County and Precinct Assessors by W. H. Osborne, Jr., Tax Commissioner, and approved by this Commission.

Which said document, marked Exhibit "I," so offered and received in evidence, is attached hereto as follows:

332 **Exhibit "I."**

"K-B No. 629.

Uniform Instructions to County and Precinct Assessors for the Year 1921 as Approved by the Nebraska Tax Commission.

W. H. Osborne, Jr., Tax Commissioner.

Printed by K-B Printing Co., K-B.

Omaha.

333 Uniform Instructtions to County and Precinct Assessors for the Year 1921 as Approved by the Nebraska Tax Commission.

W. H. Osborne, Jr., Tax Commissioner.

334 *Instructions to Assessors.*

Nebraska Tax Commission.

Lincoln, Nebr., Feb. 17, 1921.

To County and Precinct Assessors:

The following revised instructions are to be observed in the assessment of property both real and personal in the State of Nebraska for the year 1921.

The past years it has been the custom of each County Assessor to issue his own individual instructions to his Precinct Assessors, and the result was, that the assessing authorities of the 93 Counties in the State were working under that many different sets of instructions.

We ask that each Assessor study the instructions carefully, so that when his work is completed he will have the satisfaction of knowing that his work has been done according to law.

It is the belief of this department that by the use of these uniform instructions, it will be the means of a more equitable distribution of the tax burden, and a decided improvement over the discarded method.

We can hardly expect to lessen the tax burden for some time to come but the public has the right to demand that taxes shall be equally distributed, and while I appreciate the difficulty of your task, yet I am confident that considerable progress can be made if we will all do our best.

If this department can be of any assistance to you at any time, feel at liberty to command us. W. H. Osborne, Jr., Tax Commissioner.

To the Precinct Assessors of Nebraska, Greetings:

1. Remember, we have no friends to favor nor enemies to punish. We desire to conform to the laws on revenue which specifically tell us that values shall be the actual value as found in the ordinary course of trade. If in doubt regarding any question seek information from the proper authority.

2. We will take up first, the personal property schedule. The total number of items of the main schedule has been reduced to fifty-three items. Some of the items heretofore mentioned in 35 the main schedule, have been transferred to Special Schedules "A" and "B." The live stock classification has been made a part of the main schedule.

3. Exercise care in getting the full name and proper post office address plainly written. Get the age, the section on which the tax payer resides, school district number and road number, and if the party assessed is a male above the age of 21 and not over 50, enter the amount of $2.50 under the item Poll Tax. Persons living in incorporated villages who are liable by the provisions of the law regulating cities and villages, to pay the poll or labor tax or work upon the streets thereof, shall not be assessed to pay the tax provided for in this section. Refer to Sections 6457-7165-2496 and 963 of the Revenue Law for Exemptions. A discharged soldier is not exempt from Poll Tax. Be sure to have the party listing property sign the oath in every case.

4. Be sure to get the name of the precinct, or village in which the property is located. If in the village or not, write "Yes" or "No," as the case may be, in the squares at the head of the schedule.

5. You are now ready to proceed to assess the property. You will notice that each item bears a number on the schedule. Proceed by

asking the party whether he owns such property as designated under the item numbers, or special schedules.

Should he have property under any such items you shall ascertain the fair market value (See Section 6309). Enter the amount of such value in the column provided. Do not use any value that is not evenly divisible by five.

Special Schedule "A."—Section 2 of Article VIII of the Constitution provides "Household goods of the value of Two Hundred Dollars ($200.00) to each family shall be exempt from taxation. The schedule provides for the assessments of household goods under Special Schedule "A." It will be absolutely necessary under the present schedule to itemize the items under this heading. Remember that there is an unusual amount of property in the State under this schedule that is being undervalued. Do not make any lump sum assessment for household and allow the exemption to only one member of the family.

Special Schedule "B."—This schedule provides for the assessment of farm machinery and equipment. It must not be neglected and the matter of values should be carefully considered.

336 Special Schedule "C."—This schedule is to be used in detail on the assessment of merchants, automobile dealers, peddlers, and in fact every person or business that has on hand the first day of April a stock of merchandise of any character. The value of such stock shall be considered one hundred cents on the dollar, as shown by such merchants' inventories.

We are prepared to take up the items on the main schedules and you shall proceed as follows:

Item No. 1. Cattle.—The value of cattle varies very little on the average and you are in the position to ascertain this value better than any one else. The law says "Market Value." That is all we want. This does not mean that a thoroughbred animal should be computed at its beef value, but at its actual value as shown by sales in your community. To arrive at the market value of such property the County Assessor will provide a schedule of values as ascertained from live stock market reports on April first. Use your market value less the expense of putting such property on the market. A cow and a calf count as one head. A yearling means an animal born last season, and may be a few months under or a few months over such age. The same applies to either ages.

Item No. 2. Horses.—The value of a horse cannot be ascertained by its age. This value varies greatly according to class of horse and the matter of age is used principally for classification. You should arrive at that value from your knowledge of sales of animals of like character.

Item No. 3. Mules.—This should be handled in the same manner as item No. 2.

Item No. 4. All Credits.—This covers all notes, secured or unsecured judgments and allowances, bonds or annuities, in fact every part of written or printed obligations, and should be valued at its face value. Real Estate mortgages dated after July 1, 1911, are not assessable on the personal property schedule. A government pa

on is not assessable. Federal Land Bank mortgages being non-
sessable, no consideration should be given to them for taxation
rposes, either as an interest in the land or otherwise. Should you
ve reason to believe that the owner is not listing all of his credits,
should you have knowledge of any such property that should be
listed, you should report it to your County Assessor.

7 Item No. 5. Money on Hand, etc.—This covers all money
on hand or on deposit with any bank, trust company or in-
ridual. It looks bad for a comparison of the reports made by the
rious banks of the amount of deposits when such a small amount
reported by the assessor. The State Board of Equalization and
e Department of Finance, will exert every effort under the laws
the State to secure a complete and equitable return of all moneys
well as other intangible property.

Item No. 6. All Money Invested in Tax Sales.—This covers in-
tment in tax sales certificates and are worth one hundred cents
the dollar. Gather this information from your County Treas-
r.

Item No. 7. Fire and Burglar Proof Safes.—This item should not
included with other office fixtures, but should be listed separately.
ese are worth at present, in most instances, more than when
ginally purchased.

Item No. 8. All Money Paid to Building and Loan Association.—
ilding and Loan stock owned as an investment, is liable for taxes,
l the amount paid on such stock is the value to be taken for such
essment. If a borrower, the real estate pays the taxes.

Item No. 9. All Book Accounts.—This covers any amount that
y be due the party assessed, which is not in the form of a note or
er written or printed obligation. This convention has decided to
the instructions of the Federal Government, viz: That unless
h accounts have been found uncollectible, they shall be listed
one hundred cents on the dollar. Merchants are permitted to
duct their bills payable from their bills receivable, and notes pay-
e from their notes receivable.

Special Schedule "C" provides a form for doing this.

tem No. 10. All Shares of Stock, etc.—This covers the market
ue of any shares of stock that may be owned in any company that
ot assessed on its capital stock in this state under special schedule
ns.

tem No. 11. Capital of Elevator Men and Grain Brokers: Re-
to Section 6333.—Ascertain the gross amount of capital used by
kers for the year previous to April first, divide this total by 36 to
fix the average capital.

Deviate from this rule where equity would seem to demand.

Item 12. Office and Store Fixtures.—These consist of
nters and shelving, show or other display cases, scales, desks, or
er such property not specifically mentioned on the schedule and
attached to the building and forming a part of the real estate.

tem No. 13. Billiard and Other Tables.—This should cover bil-
d and pool tables found in private homes as well as in billiard
l pool halls.

Item No. 14. Steamboats, Rowboats, etc.—Not many steamboats but do not overlook the duck boats, motor and row boats.

Item No. 15. Patent Rights.—The value of a patent right depends upon the royalty received from it.

Item No. 16. Bicycles, etc.—These should be valued in the same manner as automobiles.

Item No. 17. Nursery Stock.—This should be valued in the same manner as mercantile stocks.

Item No. 18. Automobiles.—This item includes all motor vehicles. (Tractors are assessed under Schedule "B.") Be sure to get the data required. Value about as follows: In the hands of dealers, value at cost the same as other merchants' Stocks; in the hands of the user this year's models should carry a discount of 15 per cent; 1920 models, 25 per cent; 1919 models, 35 per cent; 1918 models, 50 per cent; 1916 models, 70 per cent. Base the value on the price such vehicles are sold for in your locality. Do not apply this rule to cars that have had unusual wear. There is a chance for a difference of opinion, settle the dispute at once.

Special Airplane Instructions.—No provision is made on the schedule proper for the listing of this class of property; there are a number of these machines in this State which should be listed for taxation. Exercise care in search of these and list them under item No. 52, making a note thereon of the number, so that the same may be carried forward to your abstract of assessment.

339 Item No. 19. Typesetting Machines, etc.—This item covers not only typesetting machines, but printing presses, and other equipment, found in publishing and printing plants.

Item No. 20. Moving Picture Machines, etc.—Not only get the machines, but remember that there are ticket registers, seating and stage equipment, if such are not assessed as a part of the building.

Item No. 21. Value of State Lands Under Contract.—This applies to School and State lands that have been sold under contract or are under lease by the party assessed. In case of contract assess the present value of the land, less the amount due the state. In case of leases, you should get the bonus asked for, assignment of the lease. There is hardly a school land lease in the State that is not worth a bonus.

Item No. 22.—Improvements on Leased Land, etc.—Under this item enter the value of improvements on railroad warehouse sites, school lands or private lands, and on homesteads not yet subject to final proof.

Item No. 23. Oil Stations.—This item is specially mentioned for checking purposes, and the value of the tanks and pumping equipments should be assessed here. Oil tanks and pumps owned by garages and retail dealers, should be assessed under Item No. 1. Do not overlook the oils contained in these tanks. This should be assessed as merchandise.

Item No. 24. Dogs.—Assess every dog at not less than $10.00. There are a number that are priced at $25.00 and $50.00.

Item No. 25. Poultry on Hand.—Assess poultry, this means

ucks, turkeys and geese as well as chickens, at not less than $10.00 er dozen.

Item No. 26. Hogs.—Ascertain the number of hogs and deter- ine the average weight. This data is required on the schedule. he home market value, less the expense of getting to market, shall etermine the price per pound. In the case of registered or thor- ughbred stock, value this according to sales in your locality, making ote on the schedule that such hogs are registered as thorough- bred.

40 Item No. 27. Sheep and Goats.—Value at market value, less cost of getting to market.

Item No. 28. Stands of Bees.—Assess these at not less than $5.00 ch.

Items Nos. 29 to 40, inclusive.—These items cover farm products nd are specifically mentioned for statistical purposes. Value this roperty at its home market value, less expense of getting to the arket, or at the value that such property is sold on the farm.

Item No. 41. Articles for Refining, etc.—This is a special item and ill probably be found in Douglas County only.

Item No. 42. This item covers a professional man's library, a rgeon's instruments and medicine, carpenter's and other mechanic's ols as may be found in garages or repair shops.

Item No. 43. Stocks in National or State Banks.—This covers tocks owned by the party assessed in other states. The assessment f banks in this state is made on a special schedule and the taxes paid y the bank. (Use special schedule 3 for home banks.)

Item No. 44. Property Itemized on Special Schedule "A".—Be are to bring the total of Special Schedule "A" to this item, being areful to use the schedule as intended. Make no lump sum assess- ents.

Item No. 45. Property Itemized on Special Schedule "B".—Be are to bring the total of Special Schedule "B" to this item.

Item No. 46. Merchandise, etc.—Use Special Schedule "C".—Be are to bring the total of Special Schedule "C" to this item.

Item No. 47. Jewelry and Diamonds according to value.

Item No. 48. Typewriting and Adding Machines.—Many of these re to be found in private hands, and offices, and should be assessed eparately from item No. 12.

Item No. 49. Cash Registers.—Many of these are found in 41 private hands and offices and should be assessed separately from item No. 12.

Item No. 50. Stock in Any Company or Corporation.—Owners of n interest in local telephones, elevators and co-operative companies hould be assessed under this item if the property is not regularly in- orporated and making its own returns.

Item No. 51. Franchises.—This item represents the value of privi- ges granted by various municipalities, and the value of the same hould be arrived at by determining its value.

Item No. 52. All Other Property.—This item should take care of ny property not specifically mentioned before, or of property that ay be brought into the State after the first day of April, and before

the first day of July; if the owner cannot show you a certified copy showing that such property has been assessed in some other county in the state for this year.

Item No. 53. Penalty.—In case of the refusal of the owner to list or to exhibit to you for listing any of his property, or subscribe to the oath you shall add under this item 50 per cent of the total value of such property as you may by actual knowledge list to such owner. In case you find it is necessary to list such property yourself under these conditions, you shall so state on the reverse side of the schedule and certify to the assessment of same.

You are now prepared to total Schedules. Do this carefully, seeing that the last figure is a 5 or a naught, divide, that total by five and enter this amount as the assessed value. You should at all times see that the value of each item is set down in multiples of five. Do not use cents or attempt to use a cent column.

You will notice on the reverse side of the schedule, four interrogatories. These must be answered, and in the event that the party being assessed is acting in any capacity as set forth in interrogatory No. 1, you shall make out a separate schedule covering that condition. This is important.

United States Bonds or Savings Stamps and Certificates of indebtedness are the only bonds exempt from taxation, but the interest on such bonds which have accrued, and has not been collected is taxable in the form of "Credits."

342 Remember that you are in the employ of the state and that your duties to the state do not end with the close of the assessment period, and should you know at any time during the year of any case where personal property is being sold and the owner is leaving the county or state, or the property is being levied on under execution, and in your opinion the county is liable to lose the tax, it is your duty to notify the County Treasurer at once so that the party may be detained and collection be made before the property is removed.

In obtaining signatures to the oath of the party listing the property impress upon him the seriousness of failure to include all of his property, as well as property belonging to his wife or children or property that he has under his control as caretaker, or other accounting condition. You should then date and sign the schedule in your official capacity as Precinct Assessor.

Remember that all property is subject to taxation; such property must be properly valued. People generally do not object to the payment of taxes, if they know that their neighbor is paying his just proportion.

Further Duties.—You are supplied with a book for agricultural statistics. This information is very essential, as it is compiled in connection with the Federal Report, and from these reports we obtain statistical information that is made use of by the proper authorities and such use becomes very necessary under our present conditions. Impress upon every person that this report is in no way made use of by the Department of Taxation and is treated confidential as to individuals. This book is self-explanatory and you should not miss a single one of these statistics.

You are also supplied with forms for the enrollment of the names of all male citizens of your precinct between the ages of 18 and 45, together with their addresses, and if for any reason they are exempt from militia duty, you shall enter the word "Exempt" and the reason therefor in the proper columns.

Soldier and Sailor List.—House Roll No. 524, Session Laws, 1915, provides that the County Assessors shall, at the time they compile the assessment data, also compile a list of all ex-soldiers and sailors residing in their county. The supply houses will provide the necessary form, by which these returns can be made to the County Clerk by the Precinct Assessors and for your further instructions, a letter from the Secretary of State, to this department relative to this matter is incorporated herein, as follows:

343 Hon. W. H. Osborne, Tax Commissioner, State of Nebraska.

My Dear Mr. Osborne:

Relative to the matter of gathering the information concerning ex-soldiers of all wars, authorized by the provisions of House Roll 524, Session Laws of 1915, permit us to say that this law directs the county assessors to compile a list of all ex-soldiers residing in the county and to show their address; war in which they served; their regiment, company, ship or battery in which they served; state from which they enlisted; and, it is further desired to obtain information as to how many served overseas. So assessors are requested to supply a column for that information and to see that it is carefully filled out. It will materially help this office in compiling this information if assessors and county clerks will arrange to see that precinct assessors carry out the following suggestions:

1. All precinct assessors should be supplied with liberal supply of blanks ruled as below.
2. Be sure to write plainly and spell name correctly.
3. Veterans of the Civil War, Spanish American and World War should be listed on separate blanks.
4. Blanks will be furnished county clerks for reporting names to this office in alphabetical order.

(Suggested Blank.)

Sailors and Soldiers Roster of the —— War.

Name.	Address.	Company.	Battery, vessel, regiment.	From State of—	Months served overseas.
John Doe Sample	Broken Bow Corner G St. & 10th Ave.	D	144th Reg.	California	8 mos.

Very Respectfully Yours, D. M. Amsberry, Secretary of State, By W. L. Gaston, Deputy.

You are also supplied with various forms of special schedul
These are to be used for the purpose as outlined in the hea
344 ings, and in every case where other property is owned a
not specifically mentioned in these forms, a regular form
personal schedule should be made a part of the special schedule.

In the Matter of Domestic Insurance Companies.—Pratically
returns have been made by insurance agents of the amounts of p
miums received on business written by them. You are requested
give special attention to this condition and refer to Section 6357
your revenue law.

Upon the completion of five or ten schedules, immediately m
them to your County Assessor, so that your work may be examin
and an opportunity given you for correction and instructions.

Begin this work as soon after the first of April as is possible, m
ing your returns as early as possible, so that the county assesso
office may be able to complete its tabulation. Your final repo
must all be made not later than the last Monday in May. It is ve
necessary that you get your work done early, so that the county
sessor's office may be able to have its assessment rolls prepared and
the hands of the Board of Equalization when it meets in June.

Assessment of Real Estate.—This year (1921) only land that h
been improved upon since the 1920 assessment is to be valued, b
bear in mind that you are to value any improvements that may ha
been added to or removed from any parcel of land or lot, where su
improvement is of the value of $100.00 or more. Be sure to indic
on the return of such assessment the location of the improvement
Section, Town and Range if on Real Estate and by Lot and Block
on City property and arriving at the value for added improvemen
it would seem to be equitable to exclude from the value of such i
provements the labor costs of such improvements.

In the event that you find partially completed improvements, y
should assess the same according to the amount then invested, m
ing a notation on your return to that effect, so that the completed i
provements may be additionally valued the year following.

Keep an itemized record of the time employed in doing your wo
and the necessary expense in mailing the schedules remembering t
the dates on your schedules should agree with the dates as returned
your expense account.

345 Should there be any matter of assessment that is not p
fectly clear, take the proposition up with the proper auth
ity and get it settled.

Important.—All questions at issue relating to taxation and ass
ment requiring a legal interpretation, should be submitted to
Tax Commission for a written opinion from the Attorney Gener
Office and a complete record kept of each question and opinion in
office of the county assessor for future reference.

We ask your hearty co-operation, not only with the assessor in
adjoining precinct, but also those in the adjoining counties, hav
in mind an equitable assessment not only between precincts in
county, but counties of the state.

The above and foregoing instructions are authorized for the uniform use of assessing authorities, in the State of Nebraska, for the year, 1921. By W. H. Osborne, Jr., Tax Commissioner."

346 GEORGE E. HOLCOMB, called as a witness on behalf of the Complainants, and after being duly sworn by the Chairman, testified as follows:

Examined by Mr. Clark:

Q. In whose employ are you, Mr. Holcomb?
A. I am in the Tax Department of the Union Pacific Railroad Company.
Q. Have you investigated the deeds and records of any of the counties of this state for the purpose of ascertaining the different lands conveyed, the prices thereof, the assessed value for the year A. D. 1920, and also 1921?
A. I have.
Q. What counties?
A. Kimball, Cheyenne, Dawson, Buffalo, Sherman, Howard, Greeley, Valley and Nance. Mr. Scribner and his assistant also covered the counties of Hall, Merrick, Duell, Lincoln, Keith, Garden and Morrill.
Q. Will you explain to the Board whether or not you had read Exhibit "D" before you made this research?
A. I read it last year when it was issued.
Q. Were you acquainted with the plan last year as adopted by this Board?
A. I was.
347 Q. Tell just what you took from each of these deed records in these counties?
A. I made a form of record, printed on a blank card, to show the grantor, the grantee, and the date of the deed, the book and page of the record, consideration, the area, the description, and two columns for the assessed value.
Q. Is this card marked Exhibit "J" the form of record which you have just testified about?
A. Yes sir.

Mr. Clark: Complainants offer in evidence this card marked Exhibit "J", as part of the evidence of this witness.
Which said card, marked Exhibit "J", so offered and received in evidence, is attached hereto as follows:

Exhibit "J" to Holcomb's Testimony.

Form 5391.

C. S. A. 7-21-5M.

Grantor: ——— ———.
Grantee: ——— ———.
Dated Deed: ——— —, ———.

Book —, Page —.
Description: Section —, Township —, Range —.
Acres: —.
Consideration: $—.
Assessed Value, 19—: Land, $—; Imp., $—.
" " , 19—: " , $—.
Remarks: ——.
Average Sales Value: $—. Average Assessed Value: $—.

348 Q. Were the records examined by you accurately transcribed on to these cards under this procedure which you say you took?

A. Yes sir. I started in with the record of July 1st, 1919, and took some as late as July 11th, 1921. I got the warranty deed transfers, conveying land, forty acres or more.

Q. Does the program that you have stated apply to each of the counties in which your railroad operates?

A. Yes.

Q. After you secured these transfers did you make any application of the rule set forth by this Board in Exhibit "D"?

A. I got the assessed value of this land conveyed in 1920 and the assessment in 1921 of the same land, and the computations were made in the office.

Q. Have you all of the cards here with you that you took in these respective counties?

A. No, I have three counties with me.

Mr. Clark: Mr. Chairman, I wish to say to you that if you wish to examine this witness or any of these cards we will leave them here subject to your examination as soon as we complete our work.

Q. Where you found duplicate transfers how did you proceed?

A. I eliminated all except the last dated deed recorded.

349 Mr. Clark: That is all with this witness. If the Board has any cross examination——

Mr. Osborne: I think not.

Witness excused.

350 F. E. McFarland, called as a witness on behalf of the complainants, and after being duly sworn by the Chairman, testified as follows:

Examined by Mr. Clark:

Q. Have you compiled any data, Mr. McFarland, in any of the counties in this state as to transfers beginning with July 1st, 1919 up to April 1st, 1921?

A. I have.

Q. What counties?

A. Sarpy, Johnson, Saline, Hamilton, Harlan, Franklin, Webster, Kearney and Fillmore.

Q. Have you a copy of the card that you used?

A. I have.

Q. You may explain to the Board what you transferred to this card that has been marked Exhibiit "K" from the records of the different counties which you mentioned.

A. The date of the transfer, the parties grantor and grantee, the volume and page recorded, the description, the area, consideration, and the assessment for 1920 and 1921.

Mr. Clark: The card which this witness identifies as the form which he used is now offered in evidence as Exhibit "K."

Which said car, marked Exhibit "K," so offered and received in evidence, is attached hereto as follows:

351 **Exhibit "K" to McFarland's Testimony.**

		Recorded.					Total. assessment.	
Date.	Parties.	Vol.	Page.	Description.	Area.	Cons'd'n.	1920.	1921.
..	..	..	..	..	..	..	..	..

Q. From which records did you ascertain this information?

A. From the deed records.

Q. So far as you did this work state to the Board whether or not you did it accurately and thoroughly?

A. I did.

Q. Did you do any subsequent work with these cards with reference to the plan adopted by this Board in its Exhibit "B"?

A. Yes sir.

Q. What did you do?

A. We added the total and got the per cent of the assessment for 1920; also for 1921; the per cent of reduction, and the sale value per acre for 1920 and 1921.

Q. In doing this did you apply the rules adopted by this
352 Board in 1920 and used by you in 1921, and was that work when finally completed under the supervision of Mr. A. W. Scribner?

A. Yes.

Q. Did you make any compilation in regard to per cent of decrease this year from last year?

A. Yes sir, that was shown on the final exhibit.

Mr. Clark: That is all we have with this witness.

Witness excused.

T. S. Reed, called as a witness on behalf of the complainants, and after being duly sworn by the Chairman, testified as follows:

Examined by Mr. Clark:

Q. Mr. Reed, what position do you hold and with what company?

A. In the Tax Department of the Missouri Pacific.

Q. Have you examined the deed records and ascertained the

transfers, prices, and so forth, in any of the Counties in the State?

A. Yes sir.

Q. What counties did you cover?

A. Otoe, Nemaha and Richardson.

353 Q. Have you the blank form of card that you used in that work?

A. I have.

Q. Is this Exhibit "L" the form of card you used?

A. Yes sir. There is a slight difference as to the arrangement of the assessment dates, I think, between the different cards.

Q. Have you the original cards here with you?

A. Yes sir.

Q. What did you do in getting that information?

A. I went to the Register of Deeds office and examined the deed records.

Q. From those records what did you take?

A. I took the date of the deed, the names of the grantor and grantee, the volume and page recorded, description, area, consideration, total assessment for 1920 and 1921.

Mr. Clark: Complainants offer in evidence the card referred to by the witness, marked Exhibit "L."

Which said card, so offered and received in evidence, marked Exhibit "L," is attached hereto as follows:

354 **Exhibit "L" to Reed's Testimony.**

Date.	Parties.	Recorded. Vol.	Page.	Description.	Area.	Cons'd'n.	Total assessment. 1920.	1921.
..	..	..	..	..	..	..	..	..

Q. Did you do this work thoroughly and accurately in the counties in which you operated and do your cards represent the results of that work?

A. Yes sir.

Mr. Clark: That is all.

Witness excused.

F. F. Ellsworth, called as a witness on behalf of the Complainants, and after being duly sworn by the Chairman, testified as follows:

Examined by Mr. Clark:

355 Q. What is your present position?

A. I am in the Tax Department of the Chicago, Rock Island and Pacific Railway Company.

Q. Did you examine each of the counties of the state in which your road operates to ascertain the transfers, and so forth?

A. Yes sir.

Q. What period?
A. From July 1st, 1919 to March 31st, 1921.
Q. What counties?
A. Cass and Thayer.
Q. Did you supervise the work of any other counties?
A. Yes sir, Gage, Pawnee and Jefferson.
Q. What record did you obtain this data from?
A. Obtained from the Register of Deeds' office. We had the same form of cards that Mr. McFarland submitted, and this data was transferred to a book in that form instead of to the cards.
Q. Tell the Board just what you transferrred from the different deeds?
A. I took the date, the name of the grantor and grantee, and the nature of the instrument, description, area, consideration, and the book and page recorded, and so forth, and the selling price and the year of the sale.
Q. Was the work performed by you and your assistants in this connection thoroughly and accurately done?
A. Yes sir.

Mr. Clark: That is all. If the Board desires to cross-
356 examine they may do so.

Mr. Osborne: I believe there is nothing I wish to ask.

Mr. Clark: The portions of the book referred to by this witness, containing the data testified to, will be available at all times.

Witness excused.

Mr. Clark: Now, gentlemen, I have all of the men here that have examined each of the counties so far as we are introducing them. Do you want me to put each one of them on the stand here? We have had each process used by each road now testified to.

Mr. Osborne: They have already submitted their testimony I take it.

Mr. Clark: But I have a lot more here covering all of the counties.

The Chairman: I do not think you need do that. I think you have sufficient testimony on that.

Mr. Clark: All of the cards of all of the counties will be here subject to test and verification. I will now offer in evidence Exhibit "M," being a statement of the different counties and the
357 names of the road- which assembled this data in those respective counties, so you will always know who to call on for the information.

Which said document, marked Exhibit "M," so offered and received in evidence, is attached hereto as follows:

Exhibit "M."

State Assessment of Railroads, 1921.

Assignment of Counties to Various Railroads to Secure Land-sale Values in Assessment of 1920 and 1921, Land Sales to Commence July 1, A. D. 1919, and Terminate July 31, A. D. 192[illegible]

Counties Assigned to C. & N. W. Railroad Co.

Douglas.	Burt.	Cuming.	Dodge.
Washington.	Wayne.	Dakota.	Thurston.
Cedar.	Dixon.	Madison.	Pierce.
Stanton.	Buter.	Colfax.	Platte.
Polk.	Saunders.	Lancaster.	Seward.
Nuckolls.	York.	Adams.	Clay.
Boone.	Antelope.	Knox.	Holt.
Brown.	Sheridan.	Dawes.	

Counties Assigned to Rock Island Railroad Co.

Cass.
Gage.
Pawnee.
Jefferson.
Thayer.

Counties Assigned to Union Pacific Railroad Co.

Hall.	Sherman.	Lincoln.	Cheyenne.
Merrick.	Valley.	Arthur.	Deuel.
Nance.	Buffalo.	Logan.	Kimball.
Greeley.	Dawson.	McPherson.	Morrill.
Howard.	Keith.	Garden.	

Counties Assigned to C., B. & Q. Railroad Co.

F. E. McFarland.	J. M. Albertson.	Geo. J. Matthews.	Floyd Wright
Fillmore.	Furnas.	Garfield.	Grant.
Saline.	Phelps.	Loup.	Hooker.
Kearney.	Gosper.	Wheeler.	Thomas.
Franklin.	Frontier.	Keya Paha.	Banner.
Harlan.	Red Willow.	Rock.	Sioux.
Webster.	Chase.	Blaine.	Box Butte.
358 Johnson.	Dundy.	Cherry.	Scotts Bluff.
Hamilton.	Hitchcock.	Boyd.	Cherry.
	Perkins.		
	Hayes.		

Counties Assigned to Missouri Pacific Railroad Co.

Nemaha.
Otoe.
Richardson.

A. W. SCRIBNER, called as a witness on behalf of the Complainants, and after being duly sworn by the Chairman, testified as follows:

Examined by Mr. Clark:

Q. What is your business, Mr. Scribner?

A. Tax Commissioner of the Union Pacific Railroad Company.

Q. You have heard the different witnesses testify as to the assembling of data from the different counties in this State, have you?

A. Yes sir.

Q. Did you supervise the work, the final compilation and analysis of all these cards from each of the counties for the purpose of merging it into one exhibit?

A. Yes sir.

Q. And when did you complete that?

A. As far as possible to complete it it was done last evening—some counties were still missing at that time.

Q. Just explain to the Board the process and rule applied to these cards which resulted in the exhibit that we will next offer, being Exhibit "N."

A. First, the information shown on the card was assembled
359 on the sheet for each county, showing the number of acres sold, the consideration as shown by the deeds, the assessed valuation of same lands for 1920 and the assessed valuation of same lands for 1921. Then the per cent which the 1920 assessment bore to the sales or transfer value. The per cent which the 1921 assessment bore to the sales or transfer value. The per cent of reduction from the 1920 assessment. The sales value per acre. The assessed value per acre for the year 1920. The assessed value per acre for the year 1921. Then further, for most of the counties, the sales made in the year 1921,—made and recorded in the year 1921 were separately listed showing the same information as to these sales as was shown for the full body of sales in the first compilation.

Mr. Osborne: What is the period covered by the first compilation?

A. July 1st, 1919 to April 1st, 1921. In a few instances some later sales were taken, after April 1st, but not many of those; nearly all of them stopped April 1st, 1921.

Q. This bundle marked Exhibit "N," does that contain the statement to which you have just testified, as far as you are able to assemble them from the information you had?

A. These contain the information brought in by the representatives of the various railroads, except the Chicago & Northwestern.

360 Mr. Clark: Exhibit "N" is now offered in evidence for the counties of Banner, Blaine, Box Butte, Buffalo, Cass, Chase, Cheyenne, Dawes, Dundy, Fillmore, Franklin, Furnas, Gage, Garden, Deuel, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hitchcock, Hooker, Howard, Kimball, Lincoln, Loup, Merrick, Morrill, Nance, Nemaha, Otoe, Pawnee, Phillips, Red Willow, Phelps, Richardson, Saline, Sarpy, Scotts Bluffs, Sherman, Sioux, Thayer, Thomas, Valley, Webster and Wheeler counties.

Which said document, marked Exhibit "N," so offered and received in evidence, is attached hereto as follows:

Exhibit N to Scribner's Testimony.

Banner County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by The Deeds.

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Period July 1st, 1919, to April 1st, 1921.

Number of transfers	
Number of acres sold	26,788
Consideration as shown by deeds	749,077
Assessed valuation same lands for 1920	395,9
Assessed valuation same lands for 1921	282,1
Per cent of 1920 assessment to sales value	52.7
Per cent of 1921 assessment to sales value	37.6
Per cent of reduction from 1920 assessment	28.6
Sales value per acre	27.
Assessed value per acre 1920	14.
Assessed value per acre 1921	10.

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361 Period January 1st, 1921, to April 1st, 1921.

Number of transfers	
Number of acres sold	2,729.
Consideration as shown by deeds	74,370.
Assessed valuation same lands for 1920	46,910.
Assessed valuation same lands for 1921	32,460.
Per cent of 1920 — to sales value	63.0
Per cent of 1921 assessment to sales value	43.6
Per cent of reduction from 1920 assessment	30.8
Sales value per acre	27.
Assessed value per acre 1920	17.
Assessed value per acre 1921	11.

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362 Blaine County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

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Period July 1st, 1919, to April 1st, 1921.

Number of transfers	60
Number of acres sold	32,697
Consideration as shown by deeds	$378,420
Assessed valuation same lands for 1920	$158,644
Assessed valuation same lands for 1921	138,020
Per cent of 1920 assessment to sales value	41.9%
Per cent of 1921 assessment to sales value	37.2%
Per cent of reduction from 1920 assessment	13%
Sales value per acre	$11.77
Assessed value per acre 1920	$4.942
Assessed value per acre 1921	$4.30

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Period January 1st, 1921, to April 1st, 1921.

Number of transfers	5
Number of acres sold	2,560
Consideration as shown by deeds	$30,400
Assessed valuation same lands for 1920	7,580
Assessed valuation same lands for 1921	6,460
Per cent of 1920 assessment to sales value	24.2%
Per cent of 1921 assessment to sales value	21.2%
Per cent of reduction from 1920 assessment	12.4%
Sales value per acre	$11.87
Assessed value per acre 1920	2.68
Assessed value per acre 1921	2.52

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363 Box Butte County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

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Period July 1st, 1919, to April 1st, 1921.

Number of transfers	3
Number of acres sold	68
Consideration as shown by deeds	2,83
Assessed valuation same lands for 1920	80
Assessed valuation same lands for 1921	67
Per cent of 1920 assessment to sales value	28.
Per cent of 1921 assessment to sales value	23.
Per cent of reduction from 1920 assessment	15.
Sales value per acre	41.
Assessed value per acre 1920	11.
Assessed value per acre 1921	9.

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Period January 1st, 1921, to April 1st, 1921.

Number of transfers	
Number of acres sold	4
Consideration as shown by deeds	184
Assessed valuation same lands for 1920	53
Assessed valuation same lands for 1921	45
Per cent of 1920 assessment to sales value	29.
Per cent of 1921 assessment to sales value	24.
Per cent of reduction from 1920 assessment	14.
Sales value per acre	41.
Assessed value per acre 1920	11
Assessed value per acre 1921	10

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364 Buffalo County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1, 1919, to July 1, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

		1921 deeds
Number of Transfers	248	
Number of acres sold	45,113	5
Consideration as shown by deeds	$4,619,580	$464
Assessed valuation same lands 1920	2,458,650	217
Assessed valuation same lands 1921	2,145,225	202
Per cent of 1920 assessment to sales value	53.2%	46.
Per cent of 1921 assessment to sales value	46.4%	43.
Per cent of Reduction from 1920 assessment	12.8%	6.
Sales value per acre	$102.40	$9
Assessed value per acre 1921	47.55	4
" " " " 1920	54.5	

365 Cass County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

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Period July 1st, 1919, to April 1st, 1921.

Number of Transfers	119
Number of acres sold	12,736.11
Consideration as shown by deeds	$2,823,622.35
Assessed valuation same lands for 1920	1,549,140.00
Assessed valuation same lands for 1921	1,246,695.00
Per cent of 1920 assessment to sales value	54.9%
Per cent of 1921 assessment to sales value	44.15%
Per cent of reduction from 1920 assessment	19.52%
Sales value per acre	$221.72
Assessed value per acre 1920	121.63
Assessed value per acre 1921	97.89

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Period January 1st, 1921, to April 1st, 1921.

Number of Transfers	10
Number of acres sold	1,269.50
Consideration as shown by deeds	$254,470.00
Assessed valuation same lands for 1920	146,265.00
Assessed valuation same lands for 1921	117,490.00
Per cent of 1920 assessment to sales value	57.48%
Per cent of 1921 assessment to sales value	46.17%
Per cent of reduction from 1920 assessment	19.67%
Sales value per acre	$200.45
Assessed value per acre 1920	115.21
Assessed value per acre 1921	92.55

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366 Chase County, Nebraska.

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Period July 1st, 1919, to June 30th, 1920.

Number of Transfers	70
Number of acres sold	21,639
Consideration as shown by deeds	789,250
Assessed valuation same land for 1920	299,200
Assessed valuation same land for 1921	256,434
Per cent of 1920 assessment to sales value	37.90%
Per cent of 1921 assessment to sales value	32.49%
Per cent of reduction from 1920 assessment	14.26%
Sales value per acre	36.47%
Assessed value per acre 1920	13.82
Assessed value per acre 1921	11.85

367 Cheyenne County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During Period July 1, 1919, to July 1, 1921, and the Assessments for Years 1920 and 1921 of the Lands Transferred by Those Deeds

		1921 deeds
Number of Transfers	333	
Number of acres sold	83,020	4
Consideration as shown by deeds	$5,419,657	300
Assessed val'n same lands for 1920	2,271,350	112
Assessed val'n same lands for 1921	Same.	Sa
Per cent of 1920 assessment to sales value	41.9%	37
Per cent of 1921 assessment to sales value	Same.	Sa
Per cent of Reduction from 1920 assessment	None.	No
Sales value per acre	$65.28	$67
Assessed value per acre 1921	27.36	25
1920	45.48	

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368 Dawson County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During Period July 1, 1919, to July 1, 1921, and the Assessments for Years 1920 and 1921 of the Lands Transferred by Those Deeds

		1921 deeds
Number of Transfers	273	
Number of acres sold	58,775	3
Consideration as shown by deeds	$4,749,400	$384
Assessed val'n same lands for 1920	2,673,000	202
Assessed val'n same lands for 1921	2,228,295	173
Per cent of 1920 assessment to sales value	56.1%	52
Per cent of 1921 assessment to sales value	46.9%	45
Per cent of Reduction from 1920 assessment	16.8%	14
Sales value per acre	$80.80	$104
Assessed value per acre 1921	37.90	47
1920	45.48	

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869 Deuel County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1, 1919, to July 1, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those —.

		1921 deeds only.
Number of transfers	140	13
Number of acres sold	33,273	4,650
Consideration as shown by deeds	$2,236,730	$213,950
Assessed val'n same lands for 1920	1,029,680	84,610
Assessed val'n same lands for 1921	875,228	71,919
Per cent of 1920 assessment to sales value	46.4%	39.5%
Per cent of 1921 assessment to sales value	39.2%	33.6%
Per cent of Reduction from 1920 assessment	15.0%	15.0%
Sales value per acre	$67.20	$46.00
Assessed value per acre 1921	26.60	15.45

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870 Dundy County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

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Period July 1st, 1919, to April 1st, 1921.

Number of Transfers	227
Number of acres sold	87,586
Consideration as shown by deeds	1,965,012
Assessed valuation same lands for 1920	960,625
Assessed valuation same lands for 1921	820,308
Per cent of 1920 assessment to sales value	48.88%
Per cent of 1921 assessment to sales value	41.75%
Per cent of reduction from 1920 assessment	14.38%
Sales value per acre	22.44
Assessed value per acre 1920	10.67
Assessed value per acre 1921	9.37

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Period January 1st, 1921, to April 1st, 1921.

Number of Transfers	
Number of acres sold	10
Consideration as shown by deeds	325.
Assessed valuation same lands for 1920	121.
Assessed valuation same lands for 1921	103.
Per cent of 1920 assessment to sales value	37.4
Per cent of 1921 assessment to sales value	31.9
Per cent of reduction from 1920 assessment	14.6
Sales value per acre	31.
Assessed value per acre 1920	11.
Assessed value per acre 1921	10.

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371 Fillmore County.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds

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Period July 1st, 1919, to April 1st, 1921.

Number of Transfers	
Number of acres sold	22
Consideration as shown by deeds	3,339.
Assessed value same lands 1920	2,173.
Assessed value same lands 1921	1,797.
Per cent of 1920 assessment to sales value	60.
Per cent of 1921 assessment to sales value	52.8
Per cent of reduction from 1920 assessment	23.2
Sales value per acre	153.
Assessed value per acre 1920	97.
Assessed value per acre 1921	81.

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Period January 1st, 1921, to April 1st, 1921.

Number of Transfers	
Number of acres sold	3.
Consideration as shown by deeds	571.
Assessed valuation same lands 1921	295.
Per cent of 1920 assessment to sales value	64.
Per cent of 1921 assessment to sales value	51.7
Per cent of reduction from 1920 assessment	20.2
Sales value per acre	160.
Assessed value per acre 1920	104.
Assessed value per acre 1921	83.

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872 Franklin County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

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Period July 1st, 1919, to April 1st, 1921.

Number of Transfers	217
Number of acres sold	35,476
Consideration as shown by deeds	2,599,395
Assessed valuation same lands for 1920	1,884,025
Assessed valuation same lands for 1921	1,272,305
Per cent of 1920 assessment to sales value	72.48%
Per cent of 1921 assessment to sales value	48.95%
Per cent of reduction from 1920 assessment	32.47%
Sales value per acre	73.27
Assessed value per acre 1920	53.11
Assessed value per acre 1921	35.86

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Period January 1st, 1921, to April 1st, 1921.

Number of Transfers	30
Number of acres sold	4,680
Consideration as shown by deeds	322,050
Assessed valuation same lands for 1920	154,650
Assessed valuation same lands for 1921	142,130
Per cent of 1920 assessment to sales value	48.02%
Per cent of 1921 assessment to sales value	44.13%
Per cent of reduction from 1920 assessment	8.10%
Sales value per acre	68.81
Assessed value per acre 1920	33.05
Assessed value per acre 1921	30.37

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373 Furnas County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

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Period July 1st, 1919, to April 1st, 1921.

Number of transfers	55
Number of acres sold	95.400
Consideration as shown by deeds	5,502.20
Assessed valuation same lands for 1920	3,167.15
Assessed valuation same lands for 1921	2,722.11
Per cent of 1920 assessment to sales value	57.48
Per cent of 1921 assessment to sales value	49.38
Per cent of reduction from 1920 assessment	14.05
Sales value per acre	57.3
Assessed value per acre 1920	33.2
Assessed value per acre 1921	28.5

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Period January 1st, 1921, to April 1st, 1921.

Number of transfers	3
Number of acres sold	7.72
Consideration as shown by deeds	467.05
Assessed valuation same lands for 1920	249.85
Assessed valuation same lands for 1921	182.38
Per cent of 1920 assessment to sales value	53.49
Per cent of 1921 assessment to sales value	45.3
Per cent of reduction from 1920 assessment	14.5
Sales value per acre	60.4
Sales value per acre (assessed) 1920	32.3
Assessed value per acre 1921	23.5

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374 Gage County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

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Period July 1st, 1919, to April 1st, 1921.

Number of transfers	150
Number of acres sold	18,390
Consideration as shown by deeds	2,966,798.10
Assessed valuation of same lands for 1920	1,601,854
Assessed valuation of same lands for 1921	1,463,692
Per cent of 1920 assessment to sales value	54%
Per cent of 1921 assessment to sales value	49%
Per cent of reduction from 1920 assessment	8.63%
Sales value per acre	161.33
Assessed value per acre 1920	87.10
Assessed value per acre 1921	79.59

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Period January 1st, 1921, to April 1st, 1921.

Number of transfers	38
Number of acres sold	4,997
Consideration as shown by deeds	886,095
Assessed valuation of same lands for 1920	455,855
Assessed valuation of same lands for 1921	414,122
Per cent of 1920 assessment to sales value	51%
Per cent of 1921 assessment to sales value	47%
Per cent of reduction from 1920 assessment	9.16%
Sales value per acre	177.33
Assessed value per acre 1920	91.23
Assessed value per acre 1921	82.87

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375 Garden County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds, Dated During the Period July 1, 1919, to July 1, 1921, and the Assessments for the years 1920 and 1921 of the Lands Transferred by Those Deeds.

		1921 deeds only.
Number of transfers	150	16
Number of acres sold	68,235	4,280
Consideration as shown by deeds	$1,392,833	$170,700
Assessed val'n same lands for 1920	795,209	109,985
Assessed val'n same lands for 1921	686,884	94,317
Per cent of 1920 assessment to sales value	57.9%	64.4%
Per cent of 1921 Assessment to sales value	49.3%	55.2%
Reduction from 1920 assessment	13.6%	14.2%
Sales value per acre	$20.41	$40.00
Assessed value per acre 1921	10.07	20.00

376 Garfield County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds, Dated During the Period July 1, 1919, to July 1, 1921, and the Assessments for the years 1920 and 1921 of the Lands Transferred by Those Deeds.

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Period July 1st, 1919, to April 1st, 1921.

Number of transfers	9
Number of acres sold	29,960
Consideration as shown by deeds	$730,810
Assessed valuation same lands for 1920	$416,645
Assessed valuation same lands for 1921	$353,207
Per cent of 1920 assessment to sales value	57%
Per cent of 1921 assessment to sales value	48.3%
Per cent of reduction from 1920 assessment	15.2%
Sales value per acre	24.38
Assessed value per acre 1920	13.90
Assessed value per acre 1921	11.79

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Period January 1st, 1921, to April 1st, 1921.

Number of transfers	6
Number of acres sold	2,640
Consideration as shown by deeds	$47,600
Assessed valuation same lands for 1920	23,375
Assessed valuation same lands for 1921	19,868
Per cent of 1920 assessment to sale value	48.9%
Per cent of 1921 assessment to sale value	41.7%
Per cent of reduction from 1920 assessment	15%
Sales value per acre	18.06
Assessed value per acre 1920	8.85
Assessed value per acre	7.52

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377 Gosper County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds, Dated During the Period July 1st, 1919 to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

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Period July 1st, 1919, to April 1st, 1921.

Number of transfers	199
Number of acres sold	42,001
Consideration as shown by deeds	2,476,976
Assessed valuation same lands for 1920	1,264,209
Assessed valuation same lands for 1921	1,138,296
Per cent of 1920 assessment to sales value	51.03%
Per cent of 1921 assessment to sales value	45.95%
Per cent of reduction from 1920 assessment	11.18%
Sales value per acre	58.97
Assessed value per acre 1920	30.10
Assessed value per acre 1921	27.10

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Period January 1st, 1921, to April 1st, 1921.

	1921 deeds only.
Number of transfers	17
Number of acres sold	3,250
Consideration as shown by deeds	195,345
Assessed valuation same lands in 1920	96,075
Per cent of 1920 assessment to sales value	49.18%
Per cent of 1921 assessment to sales value	44.14%
Per cent of reduction from 1920 assessment	10.26%
Sales value per acre	60.11
Assessed value per acre 1920	29.56
Assessed value per acre 1921	26.53

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378 Grant County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds, Dated During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

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Period July 1st, 1919 to April 1st, 1921.

Number of transfers	57
Number of acres sold	33,423.96
Consideration as shown by deeds	291,762.55
Assessed valuation same lands for 1920	150,005.00
Assessed valuation same lands for 1921	129,975.00
Per cent of 1920 assessment to sales value	38.29%
Per cent of 1921 assessment to sales value	33.18%
Per cent of reduction from 1920 assessment	13.35%
Sales value per acre	11.72
Assessed value per acre 1920	4.48
Assessed value per acre 1921	3.89

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Period January 1st, 1921 to April 1st, 1921.

Number of transfers	3
Number of acres sold	1,515
Consideration as shown by deeds	13,500
Assessed valuation same lands for 1920	6,225
Assessed valuation same lands for 1921	5,425
Per cent of 1920 assessment to sales value	46.11%
Per cent of 1921 assessment to sales value	40.19%
Per cent of reduction from 1920 assessment	12.85%
Sales value per acre	8.91
Assessed value per acre 1920	3.58

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379 Greeley County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds, Dated During the Period July 1st, 1919, to July 1, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

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		1921 deeds only.
Number of transfers	167	11
Number of acres sold	33,230	1,840
Consideration as shown by deeds	$2,923,740	$202,950
Assessed val'n same lands for 1920	1,546,686	98,800
Assessed val'n same lands for 1921	1,324,180	84,720
Per cent of 1920 assessment to sales value	52.9%	48.5%
Per cent of 1921 assessment to sales value	44.9%	41.8%
Per cent of reduction from 1920 assessment	14.3%	14.2%
Sales value per acre	$88.00	$110.30
Assessed value per acre 1921	39.85	45.00

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1, 1919, to July 1, 1921, and the Assessments for the Years During 1920 and 1921 of the Lands Transferred by Those Deeds.

Township.	Range.	Number of transfers.	Number acres sold.	Consideration.	Assessed, 1920.	Val'n, 1921.
9.....	9	4	465	$81,600	$40,275	$34,885
10.....	9	2	247	40,000	16,925	14,800
11.....	9	8	720	128,780	62,600	54,430
12.....	9	7	680	107,270	45,485	40,945
9.....	10	5	714	92,200	52,700	45,640
10.....	10	3	475	75,000	38,725	34,465
11.....	10	12	1,359	177,150	85,225	73,850
12.....	10	3	960	72,600	34,675	30,035
9.....	11	7	1,091	104,350	65,750	57,475
10.....	11	15	1,560	228,700	140,875	122,065
11.....	11	13	1,022	294,682	135,700	116,830
12.....	11	6	880	87,000	42,750	37,070
9.....	12	7	600	88,780	29,425	26,510
10.....	12	8	1,120	199,700	98,375	85,175
11.....	12	6	1,040	119,200	67,900	54,345
12.....	12	9	1,480	128,160	60,575	51,965
		115	15,313	$2,025,172	$1,017,960	$880,485

Number of transfers	115
Number of acres sold	15,313
Consideration as shown by deeds	$2,025,172
Assessed val'n same lands for 1920	1,017,960
Assessed val'n same lands for 1921	880,485
Per cent of 1920 assessment to sales value	50%
Per cent of 1921 assessment to sales value	43.5%
Per cent of reduction from 1920 assessment	13.5%

(Pencil Notation.)

Avrg. Sale Price	
1920	132.25
1921	66.47
	57.5

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381 Hamilton County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by These Deeds.

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Period July 1st, 1919, to April 1st, 1921.

Number of transfers	17
Number of acres sold	1973
Consideration as shown by deeds	3,478.[illegible]
Assessed valuation same lands for 1920	1,788.[illegible]
Assessed valuation same lands for 1921	1,567.[illegible]
Per cent of 1920 assessment to sales value	51.3[illegible]
Per cent of 1921 assessment to sales value	45.0[illegible]
Per cent of reduction from 1920 assessment	12.3[illegible]
Sales value per acre	175.[illegible]
Assessed value per acre 1920	85.[illegible]
Assessed value per acre 1921	79.[illegible]

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Period January 1st, 1921, to April 1st, 1921.

Number of transfers	[illegible]
Number of acres sold	2[illegible]
Consideration as shown by deeds	426.[illegible]
Assessed valuation same lands for 1920	235.[illegible]
Assessed valuation same lands for 1921	199.[illegible]
Per cent of 1920 assessment to sales value	55.1[illegible]
Per cent of 1921 assessment to sales value	47.0[illegible]
Per cent of reduction from 1920 assessment	15.2[illegible]
Sales value per acre	189.[illegible]
Assessed value per acre 1920	104.[illegible]
Assessed value per acre 1921	88.[illegible]

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Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

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Period July 1st, 1919, to April 1st, 1921.

Number of transfers	226
Number of acres sold	39,889
Consideration as shown by deeds	2,917,675
Assessed valuation same lands for 1920	1,516,150
Assessed valuation same lands for 1921	1,324,585
Per cent of 1920 assessment to sales value	51.96%
Per cent of 1921 assessment to sales value	45.40%
Per cent of reduction from 1920 assessment	12.63%
Sales value per acre	73.15
Assessed value per acre 1920	38.01
Assessed value per acre 1921	33.21

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Period January 1st, 1921, to April 1st, 1921.

Number of transfers	28
Number of acres sold	4,990
Consideration as shown by deeds	402,850
Assessed valuation same lands for 1920	159,125
Assessed valuation same lands for 1921	146,860
Per cent of 1920 assessment to sales value	39.50%
Per cent of 1921 assessment to sales value	36.46%
Per cent of reduction from 1920 assessment	7.71%
Sales value per acre	80.73
Assessed value per acre 1920	31.89
Assessed value per acre 1921	29.43

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383 Hitchcock County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

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Period July 1st, 1919, to April 1st, 1921.

Number of transfers	39
Number of acres sold	89,21
Consideration as shown by deeds	3,369,8
Assessed valuation same lands for 1920	1,727,17
Assessed valuation same lands for 1921	1,659,19
Per cent of 1920 assessment to sales value	52.18
Per cent of 1921 assessment to sales value	50.13
Per cent of reduction from 1920 assessment	3.94
Sales value per acre	37.1
Assessed value per acre 1920	19.3
Assessed value per acre 1921	18.6

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Period January 1st, 1921, to April 1st, 1921.

Number of transfers	3
Number of acres sold	7,94
Consideration as shown by deeds	332,6
Assessed valuation same lands for 1920	169,8
Assessed valuation same lands for 1921	151,9
Per cent of 1920 assessment to sales value	51.09
Per cent of 1921 assessment to sales value	45.77
Per cent of reduction from 1920 assessment	10.40
Sales value per acre	42.0
Assessed value per acre 1920	21.4
Assessed value per acre 1921	19.2

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384 Hooker County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919 to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

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Period July 1st, 1919, to April 1st, 1921.

Number of transfers	83
Number of acres sold	44,102.38
Consideration as shown by deeds	397,242.82
Assessed valuation same lands for 1920	249,340.00
Assessed valuation same lands for 1921	212,345.00
Per cent of 1920 assessment to sales value	62.77%
Per cent of 1921 assessment to sales value	53.45%
Per cent of reduction from 1920 assessment	14.84%
Sales value per acre	9.00
Assessed value per acre 1920	5.65
Assessed value per acre 1921	4.81

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Period January 1st, 1921, to April 1st, 1921.

Number of transfers	7
Number of acres sold	2,770.24
Consideration as shown by deeds	32,530.00
Assessed valuation same lands for 1920	14,410.00
Assessed valuation same lands for 1921	13,909.00
Per cent of 1920 assessment to sales value	44.30%
Per cent of 1921 assessment to sales value	42.76%
Per cent of reduction from 1920 asesssment	11.74
Assessed value per acre 1920	5.20
Assessed value per acre 1921	5.02

385 Howard County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1, 1919, to July 1, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

		1921 deeds only
Numbers of transfers	235	8
Number of acres sold	40,712	6,9
Consideration as shown by deeds	$4,381,079	$711,7
Assessed van'n same lands for 1920	2,012,190	316,6
Assessed val'n same lands for 1921	1,701,195	271,3
Per cent of 1920 assessment to sales value	45.9%	44.5
Per cent of 1921 assessment to sales value	38.8%	38.2
Per cent of reduction from 1920 assessment	14.5%	14.3
Sales value per acre	$107.60	$102.7
Assessed value per acre 1921	41.80	39.2

386 Jefferson County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

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Period July 1st, 1919, to April 1st, 1921.

Number of transfers	1
Number of acres sold	20.0
Consideration as shown by deeds	2,553.2
Assessed valuation of same lands for 1920	1,576.0
Assessed valuation of same lands for 1921	1,431,237.3
Per cent of 1920 assessment to sales value	62
Per cent of 1921 assessment to sales value	56
Per cent of reduction from 1920 asesssment	9.19
Sales value per acre	126.3
Assessed value per acre 1920	78.8
Assessed value per acre 1921	71.5

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Period January 1st, 1921, to April 1st, 1921.

Number of transfers	29
Number of acres sold	3,770
Consideration as shown by deeds	491,361
Assessed valuation same lands for 1920	288,825
Assessed valuation same lands for 1921	261,720
Per cent of 1920 assessment to sales value	59%
Per cent of 1921 assessment to sales value	53%
Per cent of reduction from 1920 asesssment	9.38%
Sales value per acre	133.16
Assessed value per acre 1920	78.27
Assessed value per acre 1921	70.93

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Johnson County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

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Period July 1st, 1919, to April 1st, 1921.

Number of transfers	150
Number of acres sold	19,041
Consideration as shown by deeds	3,204,227
Assessed valuation same lands for 1920	2,040,055
Assessed valuation same lands for 1921	1,565,087
Per cent of 1920 assessment to sales value	63.66%
Per cent of 1921 assessment to sales value	48.84%
Per cent of reduction from 1920 asesssment	23.28%
Sales value per acre	168.28
Assessed value per acre 1920	107.14
Assessed value per acre 1921	82.25

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Period January 1st, 1921, to April 1st, 1921.

Number of transfers	8
Number of acres sold	1,080
Consideration as shown by deeds	190,633
Assessed valuation same lands for 1920	120,460
Assessed valuation same lands for 1921	96,745
Per cent of 1920 assessment to sales value	63.19%
Per cent of 1921 assessment to sales value	50.75%
Per cent of reduction from 1920 asesssment	19.69%
Sales value per acre	176.51
Assessed value per acre 1920	111.54
Assessed value per acre 1921	89.58

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388 Kearney County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

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Period July 1st, 1919, to April 1st, 1921.

Number of transfers	19
Number of acres sold	26,7
Consideration as shown by deeds	3,009.8
Assessed valuation same lands for 1920	1,633.4
Assessed valuation same lands for 1921	1,354.1
Per cent of 1920 assessment to sales value	54.3
Per cent of 1921 assessment to sales value	44.9
Per cent of reduction from 1920 asesssment	17.0
Sales value per acre	112.5
Assessed value per acre 1920	61.0
Assessed value per acre 1921	50.6

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Period January 1st, 1921, to April 1st, 1921.

Number of transfers	3
Number of acres sold	4,0
Consideration as shown by deeds	614.2
Assessed valuation same lands for 1920	278.2
Assessed valuation same lands for 1921	232.1
Per cent of 1920 assessment to sales value	45.3
Per cent of 1921 assessment to sales value	37.8
Per cent of reduction from 1920 asesssment	16.9
Sales value per acre	150.5
Assessed value per acre 1920	68.2
Assessed value per acre 1921	56.8

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889 Keith County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to July 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

Number of transfers	168
Number of acres sold	60,243
Consideration as shown by deeds	$2,812,352
Assessed val'n same lands for 1920	1,297,139
Assessed val'n same lands for 1921	1,001,927
Per cent of 1920 assessment to sales value	46.2%
Per cent of 1921 assessment to sales value	35.6%
Per cent of reduction from 1920 assessment	22.8%
Sales value per acre	$44.68
Assessed value per acre	16.63

Same Recapitulation from Deeds Dated in 1921.

Number of transfers	19
Number of acres sold	5,222
Consideration as shown by deeds	$472,520
Assessed val'n same lands for 1920	171,350
Assessed val'n same lands for 1921	134,415
Per cent of reduction from 1920 assessment	21.6%
Per cent of 1920 assessment to sales value	36.3%
Per cent of 1921 assessment to sales value	28.5%
Sales value per acre	$90.70
Assessed value per acre 1921	25.74

890 Kimball County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1, 1919, to July 1, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

		1921 deeds only.
Number of transfers	308	48
Number of acres sold	100,170	12,200
Consideration as shown by deeds	$4,415,782	$562,530
Assessed val'n same lands for 1920	2,202,250	278,500
Per cent of reduction from 1920 assessment	same.	same.
Per cent of 1920 assessment to sales value	None.	None.
Per cent of 1921 assessment to sales value	49.9%	49.5%
Sales value per acre	same.	same.
Assessed value per acre 1921	$44.08	$46.10
	16.02	10.95

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1, 1919, to July 1, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

Township.	Range.	Number of transfers.	Number acres sold.	Consideration.	Assessed, 1920.	Val'n, 1921.
9	26	18	5,397	$254,250	$75,800	$63,500
10	26	13	5,006	110,794	34,525	32,675
11	26	7	2,245	76,910	19,750	19,800
12	26	9	1,916	66,839	16,000	15,800
13	26	3	575	18,400	6,175	5,520
14	26	6	3,040	69,900	24,200	22,725
15	26	6	3,921	84,892	28,200	19,951
16	26	8	2,810	77,643	20,300	15,990
9	27	11	2,800	97,350	33,175	29,480
10	27	16	6,305	169,120	46,300	40,460
11	27	4	1,920	45,800	11,500	10,240
12	27	5	3,204	146,270	36,625	36,155
13	27	1	640	51,200	16,200	16,200
14	27	7	5,600	86,640	31,025	26,715
15	27	5	1,436	14,900	5,875	4,740
16	27	7	2,640	150,750	44,900	36,380
9	28	2	1,350	33,750	17,125	13,245
10	28	8	3,000	68,240	24,430	20,975
11	28	7	4,000	80,940	27,285	23,045
12	28	8	1,845	87,200	21,900	19,730
13	28	6	1,562	72,750	23,175	18,175
14	28	3	2,080	32,620	8,300	6,630
15	28	3	2,240	33,240	10,425	8,160

9	29	5	1,340	37,200	16,100	15,775
10	29	3	2,240	40,600	16,080	16,115
11	29	5	2,726	53,800	18,865	19,090
12	29	7	2,320	92,465	33,775	29,180
13	29	4	480	53,600	9,500	7,840
14	29	2	800	11,200	4,000	3,525
15	29	8	4,400	65,440	24,850	21,510
16	29	14	5,933	174,410	58,050	46,018
9	30	6	1,440	45,600	18,000	15,600
10	30	4	720	10,900	4,100	4,240
11	30	1	320	12,800	4,575	3,660
12	30	9	2,000	80,200	25,400	23,800
13	30	2	560	59,680	15,830	15,845
14	30	8	2,141	94,500	29,925	23,660
15	30	14	7,201	123,180	53,275	37,131
16	30	4	1,600	12,080	9,000	6,400
9	31	4	2,240	47,994	15,000	8,100
10	31	5	1,120	26,400	7,100	5,240
11	31	7	2,840	35,960	13,475	12,660
12	31	6	1,560	42,616	8,650	6,920
13	31	6	960	47,200	13,925	10,700
14	31	9	2,207	233,665	65,925	54,685

15	31	3	3,060	68,880	16,550	14,475
16	31	1	160	4,000	675	605
9	32	6	2,400	38,980	13,350	9,069
10	32	9	2,360	47,000	18,050	16,223
11	32	7	3,840	67,075	25,250	21,055

Recapitulation of Abstracts of Warranty Deeds.—Continued.

Township.	Range.	Number of transfers.	Number acres sold.	Consideration.	Assessed, 1920.	Val'n, 1921.
12.....	32	4	2,110	22,493	9,300	7,585
13.....	32	6	1,160	89,500	27,775	21,807
14.....	32	8	992	114,305	40,050	37,175
15.....	32	2	1,120	8,000	4,475	4,250
16.....	32	5	2,200	23,925	8,550	6,679
9.....	33	3	1,040	22,750	5,075	3,450
10.....	33	11	3,680	67,213	22,850	20,750
11.....	33	3	480	6,100	2,725	2,315
12.....	33	9	5,223	77,665	33,875	29,233
13.....	33	9	1,600	107,220	38,875	34,210
14.....	33	9	1,407	127,180	34,325	31,705
15.....	33	5	2,831	69,740	20,575	20,375
16.....	33	6	6,910	77,822	21,460	21,460
9.....	34	9	2,080	103,200	28,650	23,525
10.....	34	4	640	35,200	16,125	7,495
12.....	34	7	2,720	124,900	41,750	32,470
13.....	34	14	3,520	272,280	96,975	63,600
14.....	34	1	40	2,400	1,000	800
15.....	34	3	2,560	36,700	12,550	9,140
		446	171,453	$5,173,416	$1,633,650	$1,369,069

Number of transfers	446
" " acres conveyed	171,453
Consideration as shown by deeds	$5,173,416
Assessed val'n same lands for year 1920	1,633,650
" " " " " " 1921	1,369,069
Per cent of 1920 assessment to sales value	31.6%
" " " 1921 " " " "	26.5%
" " " reduction from 1920 assessment	16.2%

(Pencil notation.)

Sales val. per acre	$30.18
Assessed " " "	7.99

393 Loup County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to April, 1st, 1921, and the Assessment for the Years 1920 and 1921 of the Lands Transferred by those Deeds.

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Period July 1st, 1919, to April 1st, 1921.

Number of Transfers	78
Number of acres sold	31,653
Consideration as shown by deeds	$473,095
Assessed valuation same lands for 1920	231,099
Assessed valuation same lands for 1921	198,057
Per cent of 1920 assessment to sales value	49%
Per cent of 1921 assessment to sales value	4.8%
Per cent of reduction from 1920 assessment	14.5%
Sales value per acre	$14.94
Assessed value per acre 1920	$7.30
Assessed value per acre for 1921	$6.25

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Period January 1st, 1921, to April 1st, 1921.

Number of Transfers	5
Number acres sold	920
Consideration as shown by deeds	$29,600
Assessed valuation same lands for 1920	$12,970
Assessed valuation same lands for 1921	$11,055
Per cent of reduction from 1920 assessment	15%
Per cent of 1920 assessment to sales value	43.8%
Per cent of 1921 assessment to sales value	37.3%
Sales value per acre	$32.17
Assessed value per acre 1920	14.10
Assessed value per acre 1921	12.01

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Recapitulation of Abstracts of Warranty Deeds, Dated During the Period July 1st, 1919 to July 1, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

Township.	Range.	Number of transfers.	No. acres sold.	Consideration.	Assessed 1920.	Valuation 1921.
15	3	1	160	32,000	15,225	$12,040
16	3	4	1,180	175,210	92,135	75,175
14	4	1	80	12,000	6,295	5,055
15	4	13	2,560	373,540	172,265	139,820
13	5	2	215	32,000	19,360	16,160
14	5	13	2,160	371,407	177,900	143,765
15	5	18	2,264	331,823	157,100	126,760
13	6	4	625	115,075	67,510	53,935
14	6	19	2,150	296,471	162,685	130,955
15	6	11	1,680	211,600	89,835	71,640
12	7	1	80	11,321	6,750	5,924
13	7	12	1,920	259,975	152,975	126,455
14	7	13	2,723	398,900	192,280	161,875
15	7	7	1,604	131,436	57,445	45,635
11	8	3	489	54,900	27,485	23,430
12	8	2	240	31,200	19,605	17,155
13	8	9	1,420	192,545	87,690	82,800
14	8	14	2,000	216,400	106,410	88,585
15	8	13	2,050	248,480	121,940	92,565
16	8	2	400	42,400	21,830	17,680
		162	26,000	$3,538,683	$1,754,720	$1,437,409

Recapitulation of Abstracts of Warranty Deeds.—Continued.

Number of Transfers	162	19
Number of acres sold	26,000	3,120
Consideration as shown by deeds	$3,538,683	386,455
Assessed val'n same lands for year 1920	1,754,720	189,955
Assessed val'n same lands for year 1921	1,437,409	153,510
Per cent of 1920 assessment to sales value	49.6%	49.2%
Per cent of 1921 assessment to sales value	40.6%	39.7%
Per cent of reduction from 1920 assessment	18.1%	19.2%
Sales value per acre	136.10	123.80
Assessed value per acre	55.29	50.00

395 Morrill County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919 to July 1st, 1921, and the Assessments for the Years 1920 and 1921 of the lands Transferred by Those Deeds.

		1921 deeds only.
Number of Transfers	277	14
Number of acres sold	72,332	4,381
Consideration as shown by Deeds	$3,103,136	$264,534
Assessed Val'n same lands for 1920.	1,371,276	115,200
Assessed Val'n same lands for 1921.	1,158,977	85,210
Per cent of 1920 assessment to sales value	44.2%	44.0%
Per cent of 1921 assessment to sales value	37.4%	32.2%
Per cent of reduction from 1920 assessment	15.5%	26.0%
Sales value per acre	$42.90	$60.40
Assessed value per acre 1921	16.02	10.95

396 Nance County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds, Dated During the Period July 1, 1919, to July 1, 1921 and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

		1921 deeds only.
Number of Transfers	171	20
Number of acres sold	34,213	3,940
Consideration as shown by deeds	$4,898,327	$543,821
Assessed Val'n same lands for 1920.	2,550,110	298,255
Assessed value same lands for 1921.	1,922,217	224,275
Per cent of 1920 assessment to sales value	52.6%	55.0%
Per cent of 1921 assessment to sales value	39.2%	41.3%
Per cent of reduction from 1920 assessment	24.6%	24.8%
Sales value per acre	$143.20	$138.00
Assessed value per acre 1921	56.48	56.90

397 Nemaha County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds, Filed During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

Number of transfers	17
Number of acres sold	15.89
Consideration as shown by deeds	$3,238.55
Assessed value same land for 1920	1,808.18
Assessed value same land for 1921	1,439.50
Per cent of 1920 assessment to sales value	55.83
Per cent of 1921 assessment to sales value	44.45
Per cent of reduction 1921 assessment below 1920 assessment	20.39
Average sales price per acre	203.8
Average assessed value 1920 per acre	103.8
Average assessed value per acre 1921	90.6

398 Nemaha County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds, Dated During the Period January 1st, 1921, to April 1st, 1921, and the assessment of the Year 1921 of the Lands Transferred by Those Deeds.

Number of transfers	2
Number of acres sold	2.13
Consideration as shown by deeds	444.00
Assessed value same lands for 1920	247.30
Assessed value same lands for 1921	207.30
Per cent of 1920 assessment to sales value	55.67
Per cent of 1921 assessment to sales value	46.69
Per cent of reduction 1921 assessment below 1920 assessment	16.20
Average sales value per acre	209.5
Average assessed value 1920 per acre	$116.1
Average assessed value 1921 per acre	97.3

399 Otoe County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds, Filed for Period During July 1st, 1919, to April 1st, 1921, and the Assessment for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

Number of transfers	266
Number of acres sold	32,450
Consideration as shown by deeds	$6,459,148
Assessed value same lands for 1920	3,766,340
Assessed value same lands for 1921	3,278,823
Per cent of 1920 assessment to sales value	58.31%
Per cent of 1921 assessment to sales value	50.75%
Per cent of reduction 1921 assessment below 1921 assessment	12.50%
Average sales price per acre	199.05
Average assessed value 1920 per acre	116.07
Average assessed value 1921 per acre	101.05

400 Otoe County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds, Dated During the Period January 1st, 1921, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

Number of transfers	38
Number of Acres Sold	4,791
Consideration shown by Deeds	$977,426
Assessed value same lands for 1920	581,835
Assessed value same lands for 1921	510,060
Per cent of 1920 assessment to sales value	59.52%
Per cent of 1921 assessment to sales value	52.18%
Per cent of reduction 1921 assessment below 1920 assessment	12.33%
Average sales value per acre	204.02
Average assessed value 1921 per acre	106.45
Average assessed value 1920 per acre	121.44

401 Pawnee County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds, Dated During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

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Period July 1st, 1919, to April 1st, 1921.

Number of transfers	11
Number of acres sold	15,80
Consideration as shown by deeds	2,033,422.3
Assessed valuation of same land for 1920	1,211,509.0
Assessed valuation of same land for 1921	1,048,362.0
Per cent of 1920 assessment to sales value	59
Per cent of 1921 assessment to sales value	51
Per cent of reduction from 1920 assessment	13.47
Sales value per acre	127.9
Assessed value per acre 1920	76.7
Assessed value per acre 1921	65.9

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Period January 1st, 1921, to April 1st, 1921.

Number of transfers	1
Number of acres sold	1,9
Consideration as shown by deeds	248.0
Assessed valuation of same land for 1920	152.0
Assessed valuation of same land for 1921	138.0
Per cent of 1920 assessment to sales value	61
Per cent of 1921 assessment to sales value	56
Per cent of reduction from 1920 assessment	129.4
Assessed value per acre 1920	79.3
Assessed value per acre 1921	69.9

402 Phelps County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919 to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

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Period July 1st, 1919 to April 1st, 1921.

Number of transfers	275
Number of acres sold	50,097
Consideration as shown by deeds	4,455,466
Assessed valuation same lands for 1920	2,724,879
Assessed valuation same lands for 1921	2,355,044
Per cent of 1920 assessment to sales value	61.16%
Per cent of 1921 assessment to sales value	52.86%
Per cent of reduction from 1920 assessment	13.57%
Sales value per acre	88.94
Assessed value per acre 1920	54.39
Assessed value per acre 1921	47.01

Period January 1st, 1921, to April 1st, 1921.

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Number of transfers	27
Number of acres sold	7,810
Consideration as shown by deeds	695,598
Assessed valuation same lands for 1920	426,707
Assessed valuation same lands for 1921	362,650
Per cent of 1920 assessment to sales value	61.34%
Per cent of 1921 assessment to sales value	52.13%
Per cent of reduction from 1920 assessment	15.02%
Sales value per acre	89.06
Assessed value per acre 1920	54.63
Assessed value per acre 1921	46.43

403 Red Willow County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919 to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Said Deeds.

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Period July 1st, 1919, to April 1st, 1921.

Number of transfers	3
Number of acres sold	115
Consideration as shown by deeds	5,639
Assessed valuation same lands for 1920	3,183
Assessed valuation same lands for 1921	2,892
Per cent of 1920 assessment to sales value	56.4
Per cent of 1921 assessment to sales value	51.2
Per cent of reduction from 1920 assessment	9.1
Sales value per acre	48
Assessed value per acre 1920	27
Assessed value per acre 1921	25

* * * * * * *

Period January 1st, 1921, to April 1st, 1921.

Number of transfers	1
Number of acres sold	140
Consideration as shown by deeds	642
Assessed valuation same lands for 1920	339
Assessed valuation same lands for 1921	309
Per cent of 1920 assessment to sales value	52.7
Per cent of 1921 assessment to sales value	48.1
Per cent of reduction from 1920 assessment	8.7
Sales value per acre	45
Assessed value per acre 1920	24
Assessed value per acre 1921	21

* * * * * * *

04 Richardson County, Nebraska.

ecapitulation of Abstracts of Warranty Deeds Filed for Record During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

* * * * * * *

umber of transfers	273
umber of acres sold	26,019
onsideration as shown by deeds	$5,282,830
sessed value same lands for 1920	2,814,265
sessed value same lands for 1921	2,386,227
r cent of 1920 assessment to sales value	53.27%
r cent of 1921 assessment to sales value	45.17%
r cent of reduction 1921 assessment below 1920 assessment	15.21%
erage sales value per acre	203.04
erage assessed value 1920 per acre	108.16
erage assessed value 1921 per acre	91.71

5 Richardson County, Nebraska.

ecapitulation of Abstracts of Warranty Deeds Dated During the Period January 1st, 1919, to April 1st, 1921, and the Assessment for the Year 1921 of the Lands Transferred by Those Deeds.

mber of transfers	21
mber of acres sold	2,342
nsideration as shown by deeds	$446,292
essed value same lands for 1920	278,725
essed value same lands for 1921	221,980
r cent of 1920 assessment to sales value	62.45%
r cent of 1921 assessment to sales value	49.74%
r cent of reduction 1921 assessment below 1920 ssessment	20%
erage sales value per acre	190.56
erage assessed value 1921 per acre	94.78
erage sales value per acre	119.00

406 Saline County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

Period July 1st, 1919, to April 1st, 1921.

Number of transfers	22
Number of acres sold	25,57
Consideration as shown by deeds	4,072,15
Assessed valuation same lands for 1920	2,585,48
Assessed valuation same lands for 1921	2,270,65
Per cent of 1920 assessment to sales value	63.49
Per cent of 1921 assessment to sales value	55.76
Per cent of reduction from 1920 assessment	12.18
Sales value per acre	160.4
Assessed value per acre 1920	101.9
Assessed value per acre 1921	89.4

Period January 1st, 1921, to April 1st, 1921.

Number of transfers	3
Number of acres sold	3[illegible]
Consideration as shown by deeds	506,7
Assessed valuation same lands for 1920	279,9
Assessed valuation same lands for 1921	239,9
Per cent of 1920 assessment to sales value	55.1
Per cent of 1921 assessment to sales value	47.3
Per cent of reduction from 1920 assessment	14.0
Sales value per acre	166.[illegible]
Assessed value per acre 1920	91.5
Assessed value per acre 1921	79.[illegible]

407 Sarpy County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

Period July 1st, 1919, to April 1st, 1921.

Number of transfers	5
Number of acres sold	1,135,5
Consideration as shown by deeds	568,2
Assessed valuation same lands for 1920	478,5
Assessed valuation same lands for 1921	50.0
Per cent of 1920 assessment to sales value	42.1
Per cent of 1921 assessment to sales value	15.8
Per cent of reduction from 1920 assessment	226.
Sales value per acre	11[illegible]
Assessed value per acre 1920	9[illegible]
Assessed value per acre 1921	

Period January 1st, 1921, to April 1st, 1921.

Number of transfers	4
Number of acres sold	320
Consideration as shown by deeds	78,800
Assessed valuation same lands for 1920	37,450
Assessed valuation same lands for 1921	32,290
Per cent of 1920 assessment to sales value	47.53%
Per cent of 1921 assessment to sales value	40.98%
Per cent of reduction from 1920 assessment	13.78%
Sales value per acre	246.25
Assessed value per acre 1920	117.03
Assessed value per acre 1921	100.91

408 Scotts Bluff County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period of July 1st, 1919, to April 1st 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

Number of transfers	169
Number of acres sold	17,796
Consideration as shown by deeds	1,951,258
Assessed valuation same lands for 1920	783,605
Assessed valuation same lands for 1921	672,433
Per cent of 1920 assessment to sales value	40.16%
Per cent of 1921 assessment to sales value	34.46%
Per cent of reduction from 1920 assessment	14.19%
Sales value per acre	109.65
Assessed value per acre 1920	44.03
Assessed value per acre 1921	37.78

409 Sherman County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to July 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

		1921 deeds only.
Number of Transfers	210	31
Number of Acres Sold	43,050	5,660
Consideration as shown by Deeds	$3,535,870	$467,925
Assessed Val'n same lands for 1920	1,653,225	210,860
Assessed Val'n same lands for 1921	1,437,442	185,300
Per cent of 1920 assessment to sales value	46.8%	45.6%
Per cent of 1921 assessment to sales value	40.6%	40.0%
Per cent of reduction from 1920 assessment	13.1%	12.1%
Sales value per acre	$82.36	$82.67
Assessed value per acre 1921	33.38	32.74

410 Sioux County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to July 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

Period July 1st, 1919, to April 1st, 1921.

Number of Transfers	228
Number of Acres sold	112,732
Consideration as shown by deeds	2,312,674
Assessed valuation same lands for 1920	1,401,015
Assessed valuation same lands for 1921	1,117,822
Per cent of 1920 assessment to sales value	60.58%
Per cent of 1921 assessment to sales value	48.33%
Per cent of reduction from 1920 assessment	20.21%
Sales value per acre	20.51
Assessed value per acre 1920	12.42
Assessed value per acre 1921	9.92

Period January 1st, 1920, to April 1st, 1921.

Number of Transfers	11
Number of acres sold	1,364
Consideration as shown by deeds	83,025
Assessed valuation same lands for 1920	60,040
Assessed valuation same lands for 1921	50,680
Per cent of 1920 assessment to sales value	72.19%
Per cent of 1921 assessment to sales value	61.04%
Per cent of reduction from 1920 assessment	15.59%
Sales value per acre	65.60
Assessed value per acre 1920	47.50
Assessed value per acre 1921	40.00

411 Thayer County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to July 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

Period July 1st, 1919, to April 1st, 1921.

Number of Transfers	96
Number of acres sold	38,347
Consideration as shown by deeds	4,739,14
Assessed valuation same lands for 1920	2,617,25
Assessed valuation same lands for 1921	2,347,61
Per cent of 1920 assessment to sales value	55.29%
Per cent of 1921 assessment to sales value	49.54%
Per cent of reduction from 1920 assessment	10.3%
Sales value per acre	123.5
Assessed value per acre 1920	68.2
Assessed value per acre 1921	61.2

Period January 1st, 1921, to April 1st, 1921.

Number of Transfers	31
Number of acres sold	3,860
Consideration as shown by deeds	526,700
Assessed valuation same lands for 1920	272,150
Assessed valuation same lands for 1921	244,850
Per cent of 1920 assessment to sales value	51.67%
Per cent of 1921 assessment to sales value	46.49%
Per cent of reduction from 1920 assessment	10.03%
Sales value per acre	136.45
Assessed value per acre 1920	70.51
Assessed value per acre 1921	63.43

412 Thomas County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to July 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

Period July 1st, 1919, to April 1st, 1921.

Number of Transfers	92
Number of acres sold	55,958.45
Consideration as shown by deeds	547,306.50
Assessed valuation same lands for 1920	306,844.00
Assessed valuation same lands for 1921	240,350.50
Per cent of 1920 assessment to sales value	56.06%
Per cent of 1921 assessment to sales value	43.92%
Per cent of reduction from 1920 assessment	21.67%
Sales value per acre	9.18
Assessed value per acre 1920	5.48
Assessed value per acre 1921	4.29

Period January 1st, 1921, to April 1st, 1921.

Number of transfers	6
Number of acres sold	3,680
Consideration as shown by deeds	43,700
Assessed valuation same lands for 1920	20,085
Assessed valuation same lands for 1921	14,697.50
Per cent of 1920 assessment to sales value	45.96%
Per cent of 1921 assessment to sales value	33.61%
Per cent of reduction from 1920 assessment	26.82%
Sales value per acre	12.04
Assessed value per acre 1920	5.45
Assessed value per acre 1921	3.99

413 Valley County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period, July 1st, 1919, to July 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

		1921 Deeds only.
Number of Transfers	218	18
Number of acres sold	43,142	2,73[illegible]
Consideration as shown by Deeds	$4,048,710	$259,40[illegible]
Assessed val'n same lands for 1920	2,007,310	125,20[illegible]
Assessed Val'n same lands for 1921	1,640,715	102,99[illegible]
Per cent of 1920 assessment to sales value	49.6%	48.3%
Per cent of 1921 assessment to sales value	40.5%	39.8%
Per cent of Reduction from 1920 assessment	18.0%	17.7%
Sales value per acre	$93.85	$95.[illegible]
Assessed value per acre 1921	38.00	37.7[illegible]

414 Webster County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

Period July 1st, 1919, to April 1st, 1921.

Number of Transfers	17[illegible]
Number of acres sold	27,07[illegible]
Consideration as shown by deeds	2,302,6[illegible]
Assessed valuation same lands for 1920	1,379,8[illegible]
Assessed valuation same lands for 1921	1,194,07[illegible]
Per cent of 1920 assessment to sales value	59.9[illegible]
Per cent of 1921 assessment to sales value	51.8[illegible]
Per cent of reduction from 1920 assessment	13.4[illegible]
Sales value per acre	85.[illegible]
Assessed value per acre 1920	50.[illegible]
Assessed value per acre 1921	44.[illegible]

Period January 1st, 1921, to April 1st, 1921.

Number of Transfers	[illegible]
Number of acres sold	3,6[illegible]
Consideration as shown by deeds	360,0[illegible]
Assessed valuation same lands for 1920	178,8[illegible]
Per cent of 1920 assessment to sales value	56.6[illegible]
Per cent of 1921 assessment to sales value	49.5[illegible]
Per cent of reduction from 1920 assessment	12.5[illegible]
Sales value per acre	100.[illegible]
Assessed value per acre 1920	56.[illegible]
Assessed value per acre 1921	49.[illegible]

415 Wheeler County Nebraska.

Recapitulation of Abstracts of Warranty Deeds Dated During the Period July 1st, 1919, to April 1st, 1921, and the Assessments for the Years 1920 and 1921 of the Lands Transferred by Those Deeds.

Period July 1st, 1919, to April 1st, 1921.

Number of Transfers	76
Number of acres sold	30,712
Consideration as shown by deeds	$960,620
Assessed valuation same land for 1920	$441,465
Assessed valuation same land for 1921	$391,982
Per cent of 1920 assessment to sales value	46%
Per cent of 1921 assessment to sales value	40.8%
Per cent of reduction from 1920 assessment	11.2%
Sales value per acre	$31.27
Assessed value per acre 1920	$14.37
Assessed value per acre 1921	$12.76

Period January 1st, 1921, to April 1st, 1921.

Number of Transfers	3
Number of acres sold	1,880
Consideration as shown by deeds	$47,800
Assessed valuation same land for 1920	$20,750
Assessed valuation same land for 1921	$17,140
Per cent of 1920 assessment to sales value	40.3%
Per cent of 1921 assessment to sales value	35.9%
Per cent of reduction from 1920 assessment	17.4%
Sales value per acre	$25.42
Assessed value per acre 1920	$11.03
Assessed value per acre 1921	$9.12

416 Q. In doing this work did you adopt the rule and plan which was used and adopted by this Board in 1920?

A. Yes sir.

Q. After you had worked out these cards as stated, did you reduce that result to a sheet of paper?

A. Yes sir.

Q. That sheet of paper has been marked Exhibit "O," and which you may now examine and state if the results thereon given are the accurate computations and analyses made under this rule and accurately transferred to this exhibit.

A. The computations were not all made by me personally but were made under my direction. The larger portion of the computations of the average value adjusted—the information shown in the column headed "Average Value Adjusted" was figured by Mr. Reed of the Missouri Pacific.

Q. From where did you take the data set forth in the second column?

A. This is headed "State Board Average Transfer Price 7-1-1918 to 7-1-1919"—that information was taken from the sheets made up and issued by Mr. Osborne.

Q. What exhibit of Mr. Osborne's was that?

417 A. Exhibit B.

Q. Which column?

A. Second column.

Q. And the fourth column?

A. And the Fourth column is headed "State Board Average Value Adjusted"—I wish to correct that—the second Column on Exhibit "O" was taken from the first column on Exhibit "B."

Q. From whence did you get the fourth column of Exhibit "O?"

A. That was taken from the second column of Exhibit "B."

Q. And the fifth Column of Exhibit "O" from whence did you obtain it?

A. That was taken from the second column of Exhibit "C" as shown.

Q. The work which was performed by other men under your supervision, did you check it sufficiently to advise this board as to whether or not that work was accurately performed?

A. Yes sir.

Q. And that applied to all of the cards which have been referred to here?

A. Yes sir.

Q. You may now state whether or not this Exhibit "O,"

418 with its different columns and the headings thereof, is a true and accurate result of the investigation which you have been explained?

A. It is.

Mr. Clark: We will offer in evidence Exhibit "O."

Which said document, marked Exhibit "O," so offered and received in evidence is attached hereto as follows:

(Here follows Exhibit O to Scribner's Testimony, marked side folio page 419.)

420 Mr. Clark: I will say to the Board that there are a number of counties missing, many of which we will complete as soon as we can, and let you have the results there also.

Q. Do you know, Mr. Scribner, the per cent of real estate value of the railroads in this state as compared to their total value? State it fully to this Commission if you have it and how you obtain it.

A. I have taken a record or made a computation of the percentage of real estate value of the Railroads as compared with the total value of the railroads taken from the eighth annual report of

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Nebraska State Railway Commission, issued in 1915, on page—this is a report made to the Governor—on page 516 of which is a statement showing the physical valuation of steam railroads as of July 1st, 1913, covering entire railroad property in Nebraska. In the second column of that page showing present value, rather, Department's present value, the total number the heading "B" in parenthesis, is shown a total value of $287,000,278.00; that includes some large items of property which are assessed locally and not assessed by the State Board, such as headquarters buildings, shops, shop machinery, storehouses,
421 elevators, etc., and I made as close an estimate as I could of that property figuring it would amount to about $7,000,000.00. The Union Pacific local assessments amount to over $5,000,000.00. Of course, this would give a little over $7,000,000.00 for all of the railroads of local assessments. So I deducted from the $287,000,278.00 this sum of local assessments, leaving a total value of the property assessable by the State Board of $280,000,000.00. Now from this last sum I have taken the items as shown by the Nebraska State Railway Commission as follows: Railway and Station grounds, $43,907,890.00. Other real estate, $3,249,675.00; Fencing right-of-way $1,186,912.00; Station buildings and fixtures, $43,907,890.00; Other real estate $3,249,675.00; Fencing Right of Way $1,186,912.00; Station buildings and fixtures, $4,973,136.00; Engine houses and turntables—now, that is included in the statement with the shops in an item amounting to $5,349,679.00—the shops are assessed locally and not by the Board, and Mr. Pollard and I figured it out and estimated that the engine house and turntables in that would amount to, in round numbers, $2,500,000.00.

422 Q. Did you leave that in or take it out?

A. I took out the locally assessed, the $287,000,000.00 and left in the engine houses and turntables at $2,500,000.00, which were assessable by this Board. Water stations, $1,741,184.00. Fuel stations, $727,221.00. Miscellaneous structures, $1,742,007.00. Giving a total of lands and improvements of the kind which I have read of $60,028,025.00.

Q. State whether or not that represents property assessable by this Board?

A. Yes sir.

Q. Does it include any not assessable by this board?

A. No sir, not as nearly as I could estimate it.

Q. Procede with your statement.

A. The total of this real estate and improvements thereon is $60,028,025.00, which represents 21.44 per cent of the $280,000,000.00 total valuation found after deducting locally assessed property.

Q. Now, that was based on the valuation made as of 1913?

A. Yes sir.

Q. How well are you acquainted with the railroad systems of this state?

A. Pretty well. I have had something to do with them
423 for about thirty years.

Q. In what capacity?

A. Tax Commissioner.

Q. Had occasion to know and work with the other tax Commissioners of the other roads in the state?

A. Yes sir.

Q. And have you been traveling over the roads of this state?

A. Yes sir.

Q. And for the purpose of observing their conditions and fixing values?

A. Yes sir.

Q. Do you say to this Board as to whether or not the percentages represented in that physical valuation of 1913 still apply to the present conditions of these complainants in this state?

A. In my judgment *in* fairly represents the present proportion.

Mr. Clark: I think that is all. Do you wish to cross examine this witness.

Cross-examination.

By Mr. Osborne:

Q. Mr. Scribner, the figures you just read were figures sub-
421 mitted by the railway companies to the railway commission?

A. No, these are the figures found by the Railway Commission.

Q. But based on figures submitted to them for the purpose of what?

A. The railroad companies made the report under this law which required the Nebraska Railway Commission to make a physical valuation of the railroads, whatever purpose it might be used for.

Q. That was in 1913?

A. Yes, they commenced in 1909, I think, to get it out.

By Mr. Dressler:

Q. Lots of that data was a result of investigation by the Commission's own representatives?

A. Yes. They did not adopt the railroads' figures; they adopted their own figures. I have seen the report turned in to the Commission by the Union Pacific and these are not the same figures at all they were revised as the Commission finally decided.

By the Chairman:

Q. Were they increased or decreased?

A. They are less than the railroad reports. They were decreased.

Mr. Clark: Is there anything else?

Mr. Osborne: I don't think so.

425 Mr. Clark: It is admitted that if put upon the witness stand that each of the field men would testify that the p

used in assembling the information from the deed records in the various counties were those which have been testified to by the respective witnesses on the stand.

Mr. Clark: For the purpose of giving the basis of the work done by Mr. Scribner I offer in evidence page 516 of the eighth annual report of the Nebraska State Railway Commission of date 1915, page 516 thereof being headed "Physical Valuation of Steam Railroads July 1st, 1913," and marked Exhibit "P."

Which said writing, marked Exhibit "P" so offered and received in evidence, is as follows:

Exhibit P to Scribner's Testimony.

Eighth Annual Report.

Physical Valuation of Steam Railroads, July 1, 191 3,*Covering Entire Railroad Property in Nebraska.*

Miles of Roadway, 6,147.75. Miles of Track, 8,198.48.

Subject.	Reproduction cost new.	Department's valuation.	
		Present value.	Present value, new formula.
1. R-of-W and Station Grounds:			
(*a*) Mkt. Value with acq	$27,668,411	$27,668,411	
(*b*) Inc. Acq. and Sev	43,907,890	43,907,890	
2. Real Estate	3,249,675	3,249,675	
3. Grading	42,462,847	42,462,847	
4. Tunnels	118,953	103,489	
5. Bridges, Trestles and Cul.	21,569,104	15,169,933	
6. Ties	24,054,643	15,100,939	
7. Rails	29,001,052	21,402,177	
8. Frogs & Switches	1,041,624	662,133	
9. Track Fast. & Other Mat'l.	6,689,466	4,901,849	
10. Ballast	19,432,148	16,563,919	
11. Track Laying & Surfacing	7,800,206	7,800,206	$5,598,528
12. Road way Tools	269,442	165,972	
13. Fencing Right of Way	1,849,358	1,186,912	
14. Crossings and signs	2,400,873	1,818,194	

15.	Int'g. & Other Sig. Apr.	1,262,432	935,872	
16.	Telegraph and Tel. line	1,657,990	959,281	
17.	Station Bldgs. & Fix	6,864,386	4,973,136	
18.	Gen. Office Bldg. and fix	1,829,042	1,679,780	
19.	Shops, Eng. Houses and Tbl	6,833,449	5,349,679	
20.	Shop Mach. & tools	2,381,169	1,696,369	
21.	Water Stations	2,369,503	1,741,184	
22.	Fuel Stations	1,037,424	727,221	
23.	Grain Elevators	198,644	158,596	
24.	Storage Warehouses	4,027	3,887	
28.	Electric Trans. Lines	961	913	
30.	Miscellaneous Structures	2,539,048	1,742,007	
31.	Adaptation and Solidifie'n	7,740,143	7,740,143	
32.	Engineering and Superintendence	7,050,613	7,050,613	6,157,646
33.	Steam Locomotives	12,762,387	8,413,730	
35.	Passenger cars	5,989,304	3,816,518	
36.	Freight Cars	20,908,534	14,337,264	
	37. Work and Misc. Equip't	2,679,571	1,957,817	
427	38. Rent & Rep's of Equipment	668,225	668,225	527,978
	39. Inspect'n Pur. of Equip	423,398	423,398	285.253
40.	Transportation of men and material—miscellaneous	2,576,104	2,576,104	2,028,616
41.	Stores and Sup. for Nebr	6,668,227	6,668,227	

Physical Valuation of Steam Railroads.—Continued.

Subject.	Reproduction cost new.	Department's valuation. Present value.	Department's valuation. Present value, new formula.
42. General Expenditures contingencies:			
(*a*) Mkt. Val. Land only	36,700,807	36,700,807	29,767,174
(*b*) Inc. Acq. and Sev. Right of way	38,884,179	38,884,179	31,953,840
Grand Totals:			
(*a*) Mkt. Val. land only	$318,753,190	$268,577,427	$257,723,269
(*b*) Inc. Acq. and Sev. Right-of-way	337,176,041	287,000,278	276,149,414
(*a*) Per mile of Roadway	51,849	43,687	41,922
(*b*) Per mile of roadway	54,845	46,684	44,919
(*a*) Per Track mile	38,880	32,760	31,436
(*b*) Per Track mile	41,127	35,007	33,684

Does not include supplemental reports, covering abandoned lines.

428 Mr. Clark: We will offer in evidence the final order and judgment of this Board of Equalization for the taxes for this year, A. D. 1921.

Mr. Osborne: Why not offer a final and complete return of the abstract of assessment of the State as Equalized by the State Board for the year 1921.

Mr. Clark: That will be admitted in the record.

Which said document so offered and received in evidence is attached hereto and returned herewith in the words and figures following:

NOTE.—The document referred to is not attached to the record at time this copy made.

FURTHER NOTE.—Document above referred to is attached at page 368, this record.

429 Mr. Clark: There has been offered in evidence the skeleton map of this State with the exterior boundary lines of each county showing the data assembled by this Commission as explained by the legend thereon, which is to be completed and further data added as soon as prepared.

Mr. Clark: The Complainants rest.

Statement by Mr. Magaw.

The evidence that has been introduced here, gentlemen, is, of course, documentary, and there is no dispute about it, and it is simply proved matters that are already within the knowledge of the Secretary of this Board and of the members of the Board.

The purpose in introducing them is to get them into the record so you will have them officially before you in the consideration of the question that is presented. You are also all familiar with the fact that the last Legislature passed a law requiring the assessment of property this year, whereas had it not been for that law the property would not have been assessed. This necessitated a hurried assessment and we feel that the law was passed by the Legislature largely because it recognized there had been a decline in the value of property and it felt that the assessment made in 1920 did not fairly reflect the values of this year on account of that decline.

The position of the railroads is that they have been assessed on the 1920 basis and have not been given the benefit of any decline as has been given to other property, as shown by the evidence, and while, as stated by the Secretary, the Board has not equalized the assessments, I think that when the equalization is completed it will show that there has been a reduction in real estate in the State of Nebraska, of about fifteen per cent, under the 1920 assessment, and I think it is also common knowledge that the assessors of the various counties, in making the assessment this year, generally in most if not all instances, made their assessments by reducing the 1920 assessmeent fifteen per cent.

The railroads of this state, of course, wish to pay their full sh
of taxes. These are burdens that fall upon the citizens and f
upon all of us heavily and are hard to bear particularly at th
time, but the railroad does not feel that it should bear a grea
burden than its just proportion.

431 The evidence that has been introduced I think shows, a
I do not think there will be any disposition to dispute t
fact that farm land generally throughout this state is not asse
at 100 per cent of its value. I do not believe anybody conte
that it is. I think it is estimated that it is assessed at from 6
70 per cent of its actual value. The Commission last year, or t
Board,—I suppose the work was actually done by the Secret
Mr. Osborne—at great labor, compiled a statement showing
transfer values from July, 1918, I think, to July, 1919; it
showed the assessed valuation on the tracts of land that had b
actually transferred and compared the assessed value of these tra
of land that had been transferred and compared the assessed va
tion of these tracts with the transfer price as shown by the reco
and it was shown that the assessed value of these tracts of land
had been transferred was, in round numbers, about fifty per c
of the transfer value. Now, those are based upon the Board's
figures. Now, the railroads have brought that same data down
July, 1920, to the present date, and the percentage of the ass
valuation to the transfer values shows that it is only—
432 the land is only assessed at about fifty per cent of its tra
price. And under the formula used by the Commis
which is the formula adopted in Wisconsin and some other st
I am told, it shows that any method that is used that the farm l
of the state, the real estate of this state, is assessed at from 65 t
per cent of its actual value.

The Board, as shown by its return, has assessed all the rail
property at 100 per cent of its value, and this, therefore, of co
results in a discrimination against the railroad property. As
can readily see, if two men owned a farm apiece and their fa
were assessed, one of them at 50 per cent of its actual value
the other at 100 per cent of its actual value one man would
paying twice as much taxes as the other man, which is, of co
contrary to the principle of taxation and to the constitution of
state.

The evidence shows that about twenty per cent of the prop
of the railroad is the same kind of property that your farm prop
is; it consists of right-of-way and the buildings thereon and p
erty of the same class as farm property, yet there has been no
duction made from the 1920 assessment on this class of prope
and we feel that under this showing that we are be
433 more than our just burden of taxes and that we should
granted the same percentage of reduction that has b
granted to other property, which, as I stated before, I unders
the evidence will show amounts to about a fifteen per cent reduc
under the 1920 assessment.

Mr. Clark: Now, how soon will you know.

Exhibit R.

Statement No. 23.

Grand Assessment Roll for 1904.

ounties:

	Lands.					Lots.					
	Improved.		Unimproved.			Improved.			Unimproved.		
	Value.	Av.	Acres.	Value.	Av.	No.	Value.	Av.	No.	Value.	Av.
337	122,216,789	$6.67	132,424,790	17,900,748	$1.36	216,523	$35752566	$165.12	$263,904	$6045018	$22.91

Mr. Osborne: I think we will be ready to submit any testimony, we care to submit anything, on Monday next.
Mr. Clark: Now, we will make up a statement of fact to submit this matter in the form of a short brief of the facts.
Mr. Osborne: Is that all you have, Mr. Clark?
Mr. Clark: Yes, will you now adjourn until Monday?
Mr. Osborne: We will adjourn this hearing until Monday.

Whereupon the further hearing of this matter was adjourned until nday morning, July 25th, 1921.

Monday, July 25th, 1921—two o'clock p. m.

Further hearing of this matter resumed pursuant to adjournment.

Mr. Osborne: Mr. Amsberry, will act as Chairman.
The Chairman: What is there before us at this time, Gentlemen?
Mr. Clark: Mr. Chairman, I would like to withdraw the rest on alf of each of the carriers and introduce a little more evidence.
The Chairman: There is no objection to that, and you may pro-d.
Mr. Clark: Complainants offer in evidence from page 172 of the nnial report of the Auditor of Public accounts of the State of braska, A. D. 1904, the headings on page 170 and the totals on e 172, as shown by this paper marked Exhibit "R."

Which said document, marked Exhibit "R," so offered and re-ed in evidence is attached hereto as follows:

(Here follows Exhibit R, marked side folio page 435.)

Mr. Clark: We offer in evidence from the Biennial Report of the Auditor of Public Accounts of the State of Nebraska A. D. 1919 and 1920 the heading on page 256 and the totals on 257 for A. D. 1920, as shown on the document marked Ex-"S."

Which said document, marked Exhibit "S" so offered and re-ed in evidence, is attached hereto as follows:

Exhibit S.

tem No. 2.

lso offer in evidence from the Biennial Report of the Auditor ublic Accounts, Nebraska, 1919-1920, heading on page 256, and s on page 257 as follows:

"Statement No. 108 (Continued).

Counties.	Total lands and improvements. Acres.	Value.	Per cent of inc. or dec. by State board.	Total lands and improvements as equalized by State Board of Equalization
.....	47,410,648	446,328,959	.....	428,894,0

437 Mr. Cark: We offer in evidence from page 201 of Auditor's Report A. D. 1904 the heading which commences Statement No. 26 continued being the next three lines, reading as follows: "Showing the number of miles, the assessed valuation per mile and the total assessed valuation of railroads in the State of Nebraska, as determined by the State Board of Equalization May 1 A. D. 1904 for the purpose of showing that the assessed valuation was one-fifth of the actual value."

Mr. Osborne: That is the only purpose of it?

Mr. Clark: Yes, that is the only purpose of it. If you admit the fact that is all we care for.

Mr. Osborne: We will admit that, but we do not admit the accuracy of the figures in the report.

Mr. Clark: I am not putting in the figures.

Mr. Osborne: That is all right then.

Mr. Clark: We offer in evidence Statement No. 12-B, page [illegible] and terminating on page 294 of the Report of the Auditor
438 of Public Accounts A. D. 1919 and 1920, the column headed "Assessed total valuation representing the one-fifth of the actual value as prescribed by Section 6300 revised Statutes of Nebraska, 1913.

Mr. Osborne: Is that for the purpose of verifying the totals?

Mr. Clark: No, not for that purpose but for the purpose of showing that the figures there are one-fifth of the actual value.

Mr. Osborne: If that is the purpose I do not object. It is understood that the figures represented here are not admitted to be correct. I haven't had a chance to verify them.

Mr. Clark: Yes, subject to verification by Mr. Osborne, and if you find any erro-s there it may be corrected.

Mr. Osborne: That is all right.

Which said portions of said report so offered and received in evidence are in the words and figures following:

Statement No. 12ll, Showing the Number of Miles, the Assessed Valuation per Mile, and the Total Assessed Valuation of Railroads in the State of Nebraska as Determined by the State Board of Equalization and Assessment for 1920.

Chicago, Burlington & Quincy Ry.:	Mileage.	Assessed valuation.	Assessed total valuation.
Ashland to Schuyler	49.71	$6,699.00	$331,515.00
Ashland to Sioux City	103.07	7,749.00	798,689.00
Aurora to Lester	64.06	5,589.00	258,030.00
Aurora to Palmer	35.10	6,129.00	215,127.00
Crete to Wymore	42.78	8,829.00	377,704.00
Colorado State Line to Alliance	86.69	5,589.00	484,509.00
Culbertson Jct. to Imperial	49.17	4,509.00	221,703.00
De Witt to Holdrege	133.46	7,533.00	1,027,952.00
Edgar to Superior	26.54	4,509.00	119,668.00
Fairmont to Chester	45.16	5,589.00	252,399.00
Fort Crook Line	4.47	4,509.00	20,154.00
Greeley Center to Ericson	18.32	4,509.00	82,604.00
Holdrege to Colorado State Line	161.43	7,749.00	1,250,920.00
Kenesaw to Kearney	24.19	5,589.00	135,197.00
Lincoln to Cobb Junction	7.23	5,589.00	40,408.00
Lincoln to Columbus	69.67	7,425.00	517,299.00
McCool Jct. to K. C. & O. Jct.	43.74	5,589.00	244,462.00
Nebraska City to Lincoln	57.61	7,749.00	446,419.00
Nebraska City to Salem	46.77	5,589.00	261,397.00
Nemaha City to Salem	64.78	5,589.00	362,054.00
Northport to Wyoming St. Line	54.19	5,589.00	302,867.00

Report of Auditor of Public Accounts.—Continued.

	Mileage.	Assessed valuation.	Assessed total valuation.
Chicago, Burlington & Quincy Ry. (continued):			
Odell Jct. to Kansas St. Line	6.04	5,589.00	33,757.00
Oreapolis to Ashland via Omaha	47.71	17,469.00	271,709.00
Palmer to Burwell	69.03	6,129.00	423,084.00
Palmer to Sargent	73.29	6,129.00	449,194.00
Plattsmouth to Colo. St. Line	364.25	17,469.00	6,362,558.00
Republican City to Kas. St. Line	8.50	4,509.00	38,325.00
Rulo to Oxford Jct. via Red Cloud	235.66	11,529.00	2,716,923.00
Rulo to Kansas State Line	8.19	5,589.00	45,773.00
South Sioux City to O'Neill	128.14	5,589.00	716,174.00
Stromsburg to Alama	149.13	5,589.00	835,487.00
Table Rock to So. Dak. St. Line	508.89	11,205.00	5,702,112.00
Chalco to Yutan	12.05	1,000.00	12,050.00
Total			$26,291,385.00
440 Union Pacific Ry.:			
Main Line	456.39	24,618.00	11,235,409.00
Summit to Lane	20.50	23,538.00	482,529.00
O. & R. V. Branches	428.195	10,254.00	4,390,711.00
Kearney Branch	102.66	7,425.00	762,261.00
Central City Branch	22.03	7,165.00	157,845.00
North Platte Branch	153.95	5,718.00	880,286.00
Hastings to Northwestern	27.35	6,750.00	184,613.00
Total	1,211.075	.....	18,093,644.

Chicago & N. W. Lines	1,062.55	7,595.00	8,070,822.00
Chicago, St. P., M. & O.	303.005	9,072.00	2,748,861.00
Chicago, Rock Island & Pacific Ry.:			
Maine Line	123.46	10,983.00	1,355,961.00
St. Joseph Line	69.79	8,499.00	593,145.—
Nelson Line	51.50	6,663.00	343,144.00
Total	244.75	.....	2,292,250.00
Mo. Pacific Ry.:			
Auburn Jct. to Webster Str.	81.04	8,127.00	658,612.00
Kans. St. Line to Gilmore Jct.	92.20	8,823.00	819,012.00
Lincoln to Union	45.20	8,127.00	367,340.00
Talmage to Crete	58.18	6,723.00	391,144.00
Kans. State Line to Prosser	71.26	4,563.00	325,159.00
Total	347.88	.....	2,561,267.00
Kansas City & Northwestern Ry.:			
Kans. State Line to Virginia	20.65	5,103.00	105,175.00
St. Joseph & Grand Island Ry.:			
Kans. State Line to Grand Island	112.63	7,053.00	794,734.00
Mason City to Ft. Dodge	.....	.....	108,000.00

Report of Auditor of Public Accounts.—Continued.

	Mileage.	Assessed valuation.	Assessed total valuation.
Omaha & Lincoln Ry. & Light Co.	6.63	3,000.00	19,890.00
Omaha Bridge & Terminal Ry.	1.31	.....	129,600.00
Omaha, Lincoln & Beatrice Ry.	6.12	3,000.00	18,360.00
Omaha & Southern Interurban Ry.	6.00	3,000.00	18,000.00
Illinois Central	.....	.....	10,800.00
Wabash Railway	.....	.....	10,800.00
Chicago, Milwaukee & St. Paul	.....	.....	21,600.00
Atchison, Topeka & Santa Fe	.....	.....	3,000.00
Total			340,050.00
Grant total Value of Railroads			61,299,188.00

EXHIBIT "T"

442

NEBRASKA CROP REPORTER

UNITED STATES
DEPARTMENT OF AGRICULTURE
BUREAU OF CROP ESTIMATES
IN COOPERATION WITH
STATE OF NEBRASKA
DEPARTMENT OF AGRICULTURE
BUREAU OF MARKETS AND MARKETING
LINCOLN

MARCH 1, 1921

AGRICULTURAL STATISTICS FOR THE STATE OF NEBRASKA AND THE UNITED STATES

UNITED STATES BUREAU OF CROP ESTIMATES
A. E. ANDERSON, AGRICULTURAL STATISTICIAN

STATE OF NEBRASKA, DEPARTMENT OF AGRICULTURE
LEO STUHR, SECRETARY OF AGRICULTURE

NEBRASKA MARCH 1, 1921 CROP REPORT

Farm reserves of grain are larger than usual according to estimates compiled by the bureau of crop estimates and Nebraska department of agriculture. The supply of corn on hand is estimated to be 160,983,000 bushels, wheat 19,958,000 bushels and oats 48,163,000 bushels. Large crops last year, shortage of cars at the time wheat was bringing highest prices and later the heavy drop in prices are largely responsible for the large supplies on hand. Land values have dropped slightly and cash rents are lower.

The reports indicate that 63% of the corn crop remains on farms or a reserve supply of 160,983,000 bushels as compared to 73,674,000 bushels last year. A year ago 40% of the crop was reported on farms and the ten year average is about the same. Last year's crop was much larger than usual and less live stock has been fed. Prices have been so low that farmers have refused to sell. Some have stated that the cost of husking, shelling and hauling to market has taken half of the price offered at the local elevator. About 95% of last year's corn crop was of merchantable quality as compared to the ten year average of 83%. It is estimated that 43% of the crop will be shipped out as surplus corn as compared to the ten year average of 29%.

Stocks of wheat are estimated at 19,958,000 bushels as compared to 11,528,000 bushels a year ago. This is approximately 33% of the crop against 19% on hand a year ago, and the ten year average of 23%. About 72% of the crop is shipped out of the county where grown, the balance being milled locally, used for seed or fed as screenings.

The balance of the oat crop on farms totals 48,163,000 bushels as compared to 29,384,000 bushels a year ago. This represents 58% of last year's crop on hand against 42% of the crop a year ago and the ten year average of 42%. About 32% of the corn is available for surplus shipments. Counties south of the Platte river have a larger surplus than counties north of the river as was the situation a year ago.

Estimates of stocks of barley are placed at 3,564,000 bushels or 48% of the crop as compared to 26% the ten year average. Approximately 35% of the crop will be shipped out of the county where grown as compared to the ten year average of 31%.

There has been a slight decrease in farm land values, which is rather exceptional. The average value of plow lands now and a year ago are as follows: poor plow lands $85 and $85 per acre, good plow lands $150 and $150, all plow lands $125 and $125. The average price per acre of all improved farm lands is $125 against $135 a year ago. All unimproved farm lands average $95 per acre as compared to $110 a year ago. In connection with the above figures it must be remembered that 26% of the farm land is within the sand hill area of the state where values are very low when compared to the remainder of the state.

Estimates of grain stocks for the United States are as follows: wheat, 207,591,000 bushels as compared to 165,539,000 bushels a year ago; corn, 572,397,000 bushels against 1,092,095,000 bushels held on farms last year; oats, 689,566,000 bushels and 422,815,000 bushels a year ago; barley, 61,836,000 bushels as compared to 38,040,000 bushels last year.

MARCH 1 GRAIN STOCKS

(Given in thousands of bushels, 000 omitted.)

Nebraska

	1921	1920	1919	1918	1917
Corn	160,983	73,674	34,464	139,707	73,112
Wheat	19,958	11,528	5,358	2,753	15,081
Oats	48,163	29,384	19,666	63,494	35,145
Barley	3,564	1,840	962	1,919	924

United States

	1921	1920	1919	1918	1917
Corn	1,572,397	1,092,000	855,269	1,253,290	782,303
Wheat	207,591	165,543	128,703	107,745	100,680
Oats	689,566	422,815	590,251	599,208	394,211
Barley	69,836	38,010	81,746	44,419	33,244

SIX YEARS OF NEBRASKA FARM LAND VALUES

(Average acre values for entire state.)

	1921	1920	1919	1918	1917	1916
Poor plow lands	$ 85	$ 85	$ 67	$ 60	$ 51	$ 49
Good plow lands	150	150	115	100	90	85
All plow lands	125	125	95	80	74	72
All farm land with improvements	125	135	105	92	80	75
All farm land without improvements	95	110	90	82	67	62

AVERAGE PRICES PAID NEBRASKA PRODUCERS

1919—	Wheat *	Corn *	Oats	Prairie Hay †	Alfalfa Hay †	Potatoes *	Butter *	Eggs *	Hogs †	Beef Cattle †
Jan.	$2.01	$1.26	$ .62	$19.00	$23.40	$1.26	$ .46	$ .41	$16.10	$11.90
Feb.	2.02	1.26	.59	20.00	22.70	1.35	.41	.31	16.10	12.40
Mar.	2.05	1.42	.62	20.70	24.00	1.13	.46	.32	17.00	12.30
Apr.	2.24	1.53	.66	23.50	26.70	1.18	.51	.34	18.80	13.00
May	2.18	1.59	.66	26.30	28.50	1.27	.49	.36	19.10	12.80
June	2.12	1.62	.65	22.60	22.90	1.70	.45	.31	18.90	11.90
July	1.98	1.81	.70	15.60	17.60	2.19	.47	.32	20.40	12.00
Aug.	1.95	1.69	.65	16.40	19.40	2.34	.49	.33	20.00	12.00
Sept.	1.97	1.38	.62	15.30	18.53	1.97	.51	.37	14.90	10.10
Oct.	1.99	1.23	.61	17.00	20.60	1.85	.58	.50	13.40	9.60
Nov.	2.02	1.22	.65	17.60	21.30	1.90	....	....	13.20	9.70
Dec.	2.24	1.25	.70	18.20	22.00	1.75	.63	.60	12.20	9.40
1920—										
Jan.	2.28	1.29	.73	18.20	21.60	2.41	.56	.51	13.20	10.10
Feb.	2.14	1.22	.75	17.10	20.80	2.75	.50	.41	13.20	9.40
Mar.	2.26	1.37	.81	15.10	18.80	3.00	.54	.35	13.20	10.10
Apr.	2.40	1.49	.89	14.30	18.40	4.82	.52	.36	12.80	10.30
May	2.46	1.64	.95	15.50	18.50	5.12	.53	.33	12.80	10.20
June	2.45	1.62	.96	14.20	17.80	5.49	.50	.32	13.00	11.20
July	2.07	1.24	.63	14.00	16.00	3.43	.51	.33	13.40	10.70
Aug.	2.13	1.30	.61	13.30	15.70	2.06	.50	.37	13.40	9.80
Sept.	1.97	.83	.51	11.70	15.62	1.60	.52	.42	13.90	9.80
Oct.	1.71	.61	.44	11.00	13.00	.98	.56	.48	13.30	8.30
Nov.	1.31	.41	.37	10.60	12.00	1.20	....	....	11.20	7.70
Dec.	1.39	.40	.39	9.10	11.50	1.19	.42	.53	8.00	6.70
1921—										
Jan.	1.38	.37	.33	8.75	11.65	1.07	.36	.44	8.00	6.70

†Prices at middle of month. *Prices at close of month.

NEBRASKA GRAIN STOCKS BY DISTRICTS

	Remaining on Farms				Shipped and to be Shipp			
	Corn	Wheat	Oats	Barley	Corn	Wheat	Oats	Barl
District	%	%	%	%	%	%	%	%
Northwest	53	27	73	62	5	66	23	11
North	51	31	58	39	20	67	28	2
Northeast	55	19	48	36	39	68	43	4
West	56	28	57	62	33	76	31	5
Central	56	29	53	54	36	65	34	4
East	67	33	61	44	50	71	35	2
Southwest	68	35	61	59	37	73	25	3
South	64	37	60	42	47	73	29	3
Southeast	62	39	66	46	53	78	31	4

AVERAGE LAND VALUES PER ACRE BY DISTRICTS

District	Poor Plow Lands	Good Plow Lands	All Plow Lands	Improved Farm Lands	Unir prov Far Lan
Northwest	$ 21	$ 55	$ 49	$ 40	$ 2
North	28	80	53	61	4
Northeast	122	196	163	198	16
West	33	75	55	66	5
Central	58	121	92	100	8
East	134	210	190	215	17
Southwest	22	69	49	60	4
South	49	96	77	87	6
Southeast	105	172	146	160	13

CASH RENTS BY DISTRICTS

	Average Per Farm			Average Per Acre	
District	Paid for Typical Farm	Value of such Farm	No. Acres in such Farm	Paid for Plow Fields	Val of su Fie
Northwest	$ 540	$15,725	450	$ 3.16	$ 3
North	871	13,666	260	4.00	6
Northeast	1,192	28,866	164	9.00	18
West	820	13,530	285	5.23	5
Central	790	17,060	173	5.50	10
East	1,255	31,209	154	10.40	21
Southwest	761	11,300	400	3.75	5
South	855	15,600	199	5.50	7
Southeast	1,036	26,004	160	9.80	15

441 Mr. Clark: Complainants now offer in evidence the Nebraska Crop Reporter dated March 1, 1921, calling specific attention to the next to the last paragraph on page 2 and the average land values per acre by districts on page 4; also on page 3 the table under the heading of "Sixty years of Nebraska Farm Land Values" (Average acre values for entire state)", and document being marked Exhibit "T".

Which said document, marked Exhibit "T", so offered and received in evidence is attached hereto as follows:

(Here follows Exhibit "T", marked page 442.)

443 Mr. Clark: Complainants will now recall Mr. Scribner.

A. W. SCRIBNER, a witness heretofore called and duly sworn on behalf of complainants, was recalled and testified as follows:

Examined by Mr. Clark:

Q. Mr. Scribner, have you made any study to determine from any of the public records of this state the assessed land values?
A. Yes sir.
Q. For what year?
A. For the year 1920.
Q. What was the basis you used? From what did you get that information?
A. The report of the State Auditor, Biennial Report years 1919 and 1920.
Q. And what particular tables or pages did you refer to?
A. Pages 256 and 257.
Q. What was the process you used in making this deduction?
A. This report shows the total lands and improvements assessed in the State of Nebraska, number of acres to be 47,410,648; the total assessed value of the same $428,894,670.00. Understanding
444 that that total valuation represented the one-fifth value I multiplied it by five to get the so-called assessed actual valuation which gives a total of $2,144,473,350.00 actual valuation; dividing that by the number of acres gives an average assessed valuation or so-called actual valuation being one-fifth of the assessed valuation, of $45.23 per acre.
Q. Did you make the same deduction for the year 1921 from the figures assembled by the railroads and which have been introduced here in evidence?
A. Yes sir. I was unable to——
Q. What was the result? I mean from the figures assembled by the railroads and which have been introduced here in evidence?
A. Yes sir. I was unable to make this computation for the entire state. Statistics for about seventeen or eighteen counties were miss-

ing, but as to the counties where we had computed the average value adjusted from sales July 1st, 1919, to April 1st, 1921, I multiplied the number of acres in each county by the average value adjusted, so found in each county, and then made a footing of the total acres and total valuation for all except the missing counties, being
445 74 counties for which I had the figures, and it showed the total acreage of 33,330,970. The total average value adjusted, found as explained, equaled $3,440,653,141.00, showing an actual valuation per acre on that basis for the 74 counties of $103.22.

Q. Now, the counties which are missing——

Mr. Osborne: Just a moment—I have a question there.

By Mr. Osborne:

Q. Mr. Scribner, you say that shows what?
A. $103.22.

By Mr. Osborne:

Q. Actual value?
A. Actual value per acre.

Mr. Clark, resuming:

Q. That is the transfer or sale value?
A. The sale value.

Mr. Osborne: I had the wrong idea.

A. On what we show the average value adjusted according to each county.

Q. This is not the assessed value but the sale value?
A. The sale value.

Q. Mr. Scribner, looking at Exhibit "O", I will ask you if the counties which are missing in the calculation which you
446 have just made are those shown as missing in Exhibit "O"?
A. Yes sir. I can give you the names of the counties.

Q. Read them?
A. Box Butte, Boyd, Chase, Cherry, Custer, Frontier, Hayes, Keya Paha, Logan, McPherson, Morrill, Perkins, Polk and Rock.

Mr. Clark: The complainants now offer in evidence a table prepared by Mr. Osborne with the following heading: "The following is the reductions and increases as outlined by the State Board for the several counties as pertains to real estate. This does not include town lots and city property", same to be marked Exhibit "U". The Complainants now rest.

Which said document, marked Exhibit "U", so offered and received in evidence, is attached hereto as follows:

Exhibit "U" to Scribner's Testimony.

The following is a tentative outline of the reduction and increases as outlined by the State Board for the several counties as pertains to real estate. This does not include town lots and City property.

County.	Equalized value, 1920.	Assessors' return, 1921.	Proposed % increase or decrease.	Proposed value per acre, 1921.
Cass	132.59	107.04	inc. 4%	$111.32
Nemaha	119.07	95.38	0	95.38
Otoe	124.40	114.77	Dec. 8%	105.58
Richardson	106.34	92.11	0	92.11
Sarpy (report not received)	.....	.....	..	.....
Douglas	167.36	144.05	0	144.05
Burt	142.14	124.03	0	124.03
Cuming	143.01	123.60	0	123.60
Dodge	140.32	119.36	0	119.36
Washington	148.00	133.89	dec. 6%	125.86
Wayne	133.78	94.48	Inc. 12%	105.82
Dakota	112.92	96.86	0	96.86
Thurston	134.81	98.02	0	98.08
Cedar	114.75	97.00	0	97.00
Dixon	99.00	78.19	Inc. 5%	82.10
Madison	102.54	86.72	0	86.72
Pierce	90.42	76.78	0	76.78
Stanton	115.90	98.16	0	98.16
Butler	126.34	88.30	Inc. 10%	97.13
Colfax	132.45	117.70	Dec. 5%	111.82
Platte	116.98	99.20	0	99.20
Polk	113.61	96.99	0	96.99
Saunders	128.59	109.75	)	109.75

Exhibit "U" to Scribner's Testimony.—Continued.

County.	Equalized value, 1920.	Assessors' return, 1921.	Proposed % increase or decrease.	Proposed value per acre, 1921.
Lancaster	115.67	100.40	0	100.40
Saline	109.81	96.30	Dec. 3%	93.41
Seward	110.66	87.78	Inc. 5%	92.17
Gage	91.35	83.24	Dec. 4%	79.91
Johnson	95.60	85.97	Dec. 5%	81.67
Pawnee	80.96	69.21	0	69.21
Jefferson	81.33	69.67	0	69.67
Nuckolls	68.03	58.62	0	58.62
Thayer	72.43	65.26	Dec. 5%	62.00
Fillmore	99.51	85.26	0	85.26
Hamilton	101.25	86.68	0	86.68
York	108.12	92.71	0	92.71
Adams	84.48	75.12	Dec. 4%	72.12
Clay	91.25	77.69	0	77.69
Hall	71.69	61.55	0	61.55
Merrick	73.64	59.33	Inc. 4%	61.70
Boone	82.90	70.60	0	70.60
Nance	79.64	58.75	Inc. 10%	64.63
Antelope	60.34	50.09	0	50.09
Boyd	51.54	43.22	0	43.22
Knox	62.63	53.26	0	53.26
Holt	20.59	16.24	0	16.24
Garfield	15.91	12.36	Inc. 7%	13.23
	9.17	7.73	0	7.73

Keya Paha	12.65	9.89	Inc. 5%	10.38
Rock	10.68	10.52	Dec. 14%	9.05
Greeley	46.82	42.29	0	42.29
Howard	53.62	45.71	0	45.71
Sherman	41.46	35.58	0	35.58
Valley	47.65	39.51	0	39.51
Buffalo	55.15	48.02	Dec. 4%	46.11
Dawson	48.57	43.31	Dec. 5%	41.14
Kearney	60.36	50.93	0	50.93
Phelps	59.32	51.48	0	51.48
Franklin	46.53	38.84	0	38.84
Harlan	38.03	32.00	0	32.00
Webster	52.83	47.71	Dec. 6%	44.85
Furnas	34.56	29.72	0	29.72
Gosper	33.82	30.14	Dec. 5%	28.63
Frontier	19.98	17.04	0	17.04
Red Willow	25.50	22.18	Dec. 4%	21.29
Chase	14.40	12.20	0	10.47
Dundy	12.32	10.47	0	10.47
Hayes	14.82	12.87	Dec. 8%	12.87
Hitchcock	21.23	19.80	Dec. 8%	18.22
Custer	24.47	19.51	Inc. 5%	20.49
Keith	16.61	12.84	Inc. 7%	13.74
Lincoln	11.54	9.70	Inc. 4%	10.09
Perkins	21.64	15.48	Inc. 10%	17.03
Arthur	5.13	5.12	Dec. 15%	4.35
Logan	9.82	9.60	Dec. 12%	8.45
McPherson	5.79	4.90	Inc. 15%	5.22
Blaine	5.45	4.90	Dec. 5%	4.66
Cherry	6.26	5.29	0	5.29

Exhibit "U" to Scribner's Testimony.—Continued.

County.	Equalized value, 1920.	Assessors' return, 1921.	Proposed % increase or decrease.	Proposed value per acre, 1921.
Grant	4.34	4.24	Dec. 12%	3.73
Hooker	4.78	3.84	Inc. 4%	4.72
Thomas	5.70	4.54	Inc. 4%	4.74
Garden	11.49	8.63	0	9.81
Sheridan	8.63	8.63	Dec. 15%	7.34
Cheyenne	26.27	25.34	Dec. 12%	22.30
Deuel	30.72	26.16	0	26.16
Kimball	21.11	19.43	Dec. 8%	17.88
Morrill (report not received	.....	.....	..	.....
Banner	11.85	7.30	0	7.30
Sioux	8.71	6.91	Inc. 5%	7.26
Box Butte	10.26	8.78	0	8.78
Daws	12.08	10.45	0	10.45
Scotts Bluff (report not received)	.....	.....	..	.....

Explanation.—Banner County was entitled to a decrease of 20% in 1920, which they didn't take. This year they are taking this decrease in addition to the 15% to which they are entitled which accounts for their large decrease.

449 Mr. Osborne: Of course, gentlemen, I might say that the Board are not advised as to what the purpose of this record is. If it is for the purpose of going up to the courts if the result here is not in keeping with what you think it should be, then I assume that the Board ought to be permitted to present some testimony to combat the testimony submitted wholly on the part of the railroad companies.

Mr. Clark: Now, I will say to the Board this: That to this day there has been no determination of any of the railroads of that question and each railroad will have to decide for itself as to what it will do in the future.

Mr. Osborne: I mention that for the reason that there has been no effort on the part of the Board or myself to combat any of the evidence presented. We have admitted everything in the record we do not confess at all.

Mr. Clark: Yes, and most of it is your own record.

Mr. Osborne: And there is some argument, of course.

450 Mr. Clark: But that is a different question. That will be the deductions to be drawn from these papers. Of course we think we have shown from these records a portrait of inequality that entitled us to relief as far as the real estate is concerned—I concede it does not as to anything else—it shows in that respect we should have the same deduction as other property owners of realty.

(Statement by Mr. C. A. Magaw.)

Mr. Clark: Now, Mr. Osborne, referring to your inquiry a few moments ago: while Mr. Magaw and I represent each of the carriers sparately for the purpose of this hearing, as to the future course the other railroads will pursue I cannot advise you, and if you have anything to introduce, as a matter of prudence I think you should put it in because I cannot tell what the other roads will do. That is all we have to offer.

Mr. Osborne: I guess we might conclude the hearing on the matter. I do not believe we care to offer anything at this time.

451 Final order and judgment of the Board for year 1921 offered in evidence at page 345 hereof, to be attached to this page as follows:

Minute Entries of Order of State Board.

Lincoln, Nebraska, July 25, 1921.

In the matter of the equalization of the valuation of the assessment of the property of the Chicago, Rock Island & Pacific Railroad Company, the St. Joseph & Grand Island Railway Company, the Union Pacific Railroad Company, the Chicago & Northwestern Railway Company, the Chicago, Burlington & Quincy Railroad Company, the Chicago, St. Paul, Minneapolis & Omaha Railway Company and the Missouri Pacific Railway Company, the matter having been given full and due consideration by the Board and considering the fact that land and improvements outside of the

Railroad right of way in 1920 was increased approximately 62% over that of the prior year and it having been assumed by the Board at the time of fixing of the valuations of the railroads in May of 1920 that the general average increase obtained in the state would not exceed 40% and for the further reason that the land constituting the right of way of the Railroad Companies, is, to the mind of the Board a better grade of land than the general
452 average in the state and is improved to the extent that it is graded for the accommodation of the rolling stock of the Companies to which no consideration has heretofore been given, and from the fact that the average reduction over 1920 per acre, as returned by the assessing authorities is approximately 15.51%, that by allowing the railroads to be and remain as fixed by the State Board heretofore in May, 1920, will result in a fair and an equal valuation as compared to farm lands generally in the state.

I move that the complaint of the several companies be denied. Mr. Marsh seconded the motion. The Chairman by a motion directed the secretary to call the roll which was as follows: Mr. Amsberry, Aye, Mr. Marsh, Aye, Mr. Cropsey, Nay and explains his vote as follows:

In making up the valuation of the Railroad property it is generally agreed that there is about 15 or 20% of this value in real estate and on that basis, I think that the whole assessment should be reduced 3% to equalize with other real estate. I believe in reducing the taxes we might be enabled to reduce the freight and passenger rates, which, in my opinion is essential. Mr. Osborne, Aye.

453 **Reporter's Certificate.**

STATE OF NEBRASKA,
Lancaster County, ss:

I, John S. Taggart, official Reporter Fourth Judicial District of Nebraska, do hereby certify that I reported in shorthand the proceedings and testimony before the Nebraska State Board of Equalization and Assessment in the above entitled matter, and that the within and foregoing is a full, true and complete transcript of the evidence and proceedings, including all exhibits that were offered and received at said hearing, as the same appear in my shorthand notes taken at the time and place hereinabove stated. (Sgd.) John S. Taggart, Official Reporter, Fourth Judicial District of Nebraska.

Order Settling Bill of Exceptions.

I hereby certify that the within and foregoing is a true, correct and complete transcript of all of the evidence offered and received upon the hearing of the above entitled matter, and includes the decision of the Board upon the application herein.

And, now, upon the application of the complainants railroad companies, the within bill of exceptions is allowed and settled as such and filed in said matter and ordered to be made a part of the record therein.

Dated this 10th day of August, 1921. (Sgd.) Darius M. Amsberry, Acting Chairman. (Seal.)

454 & 455 **Reporter's Certificate.**

STATE OF NEBRASKA,
Lancaster County, ss:

I, John S. Taggart, Official Reporter Fourth Judicial District of Nebraska, do hereby certify that I reported in shorthand the proceedings and testimony before the Nebraska State Board of Equalization and Assessment in the above entitled matter on July 25th, 1922, and that the within and foregoing is a full, true and complete transcript of the evidence and proceedings, including all exhibits offered and received in evidence at said hearing, and that the copies of said exhibits included herein are true and correct copies of the originals thereof, and that said testimony and proceedings were correctly transcribed herein as the same appear in my shorthand notes taken at the time and place hereinabove stated. John S. Taggart, Official Reporter, Fourth Judicial District of Nebraska.

Order Settling Bill of Exceptions.

I hereby certify that the within and foregoing is a true, correct and complete transcript of all of the evidence offered and received and proceedings had upon the hearing of the above entitled matter, and includes the decision of the Board upon the applications herein.

And now, upon the application of the complainants railroad companies, the within bill of exceptions is allowed and settled as such and filed in said matter and ordered to be made a part of the record in said matter.

Dated this 11th day of August, 1922. D. M. Amsberry, Acting Chairman. (Seal.)

456 **Defendants' Exhibit No. 2.**

Defendants offered in evidence defendants' Exhibit 2, being an affidavit of Ulysses G. Powell, as follows (as to plaintiff, Chicago & North Western Railway Company's property):

"Ulysses G. Powell being first duly sworn deposes and says:

1. That he is an accountant of more than thirty years' experience; that he was for more than twelve years chief accountant for the Nebraska State Railway Commission, and in that capacity had charge of the annual reports filed by the plaintiff company with said commission.

2. That he has investigated the report filed by the plaintiff company with the Nebraska Commission which shows the value of plaintiff's property located in the state of Nebraska as of July 1, 1909.

3. That he has tabulated from the reports filed by the plaintiff with the Nebraska Commission the additions and betterments to plaintiff's property located in Nebraska from July 1st, 1909, to December 31st, 1921.

4. That from his investigation he finds that by using the same methods of calculation as adopted by the plaintiff company in its return to the Commission as of July 1st, 1909, a total value of plaintiff's property in Nebraska as of December 31st, 1921, including working capital is $63,438,309.27."

457 **Defendants' Exhibit No. 6.**

Defendants offered in evidence defendants' Exhibit 6, being an affidavit of Ulysses G. Powell, as follows (as to plaintiff, Chicago, St. Paul, Minneapolis & Omaha Railway Company's property):

"Ulysses G. Powell being first duly sworn deposes and says:

1. That he is an accountant of more than thirty years' experience; that he was for more than twelve years chief accountant for the Nebraska State Railway Commission, and in that capacity had charge of the annual reports filed by the plaintiff company with said commission.

2. That he has investigated the report filed by the plaintiff company with the Nebraska Commission which shows the value of plaintiff's property located in the state of Nebraska as of July 1st, 1909.

3. That he has tabulated from the reports filed by the plaintiff with the Nebraska Commission the additions and betterments to plaintiff's property located in Nebraska from July 1, 1909, to December 31, 1921.

4. That from his investigation he finds that by using the same methods of calculation as adopted by the plaintiff company in its return to the Commission as of July 1st, 1909 a total value of plaintiff's property as of December 1st, 1921, including working capital is $4,890,633.84."

458 **Defendants' Exhibit No. 4.**

Defendants offered in evidence Defendants' Exhibit 4 being page 471 of the printed volume being Fourth Annual Report of the Nebraska State Railway Commission, as follows:

Physical Value for July 1, 1909, of Chicago & Northwestern Railway Company's Property.

Miles of Roadway, 1,1074.63. Miles of Track, 1,263.30.

Subject.	Respondent's valuation, repro. new.
1. Right of Way and Station Grounds	$7,014,369.00
3. Grading	5,873,154.00
5. Bridges, Trestles and Culverts	2,658,121.00
6. Ties	1,992,107.00
7. Rails	3,533,228.00
8. Frogs and Switches	113,684.00
9. Track Fastenings, etc	692,593.00
10. Ballast	704,439.00
11. Track Laying, etc	1,286,016.00
12. Roadway Tools	19,920.00
13. Fencing—Right of Way	315,946.00
14. Crossings and Signs	141,150.00
15. Signals	22,389.00
16. Telegraph and Telephone Lines	6,245.00
17. Station Bldgs., etc	737,342.00
18. General Office Bldgs. and Fixtures	18,479.00
19. Shops, Engine Houses and Turntables	272,679.00
20. Shop Machinery and Tools	28,946.00
21. Water Stations	251,797.00
22. Fuel Stations	150,088.00
23. Grain Elevators	44,416.00
24. Storage Warehouses	5,600.00
30. Miscellaneous Structures	678,529.00
31. Adaptation and Solidification	2,223,212.00
32. Engineering and Superintendence	1,302,057.00
33. Steam Locomotives	1,222,066.00
35. Passenger Cars	701,319.00
36. Freight Cars	4,047,666.00
37. Work and Floating Equipment	32,315.00
38. Rent and Repairs of Equipment	117,623.00
40. Transportation of Material	3,766,976.00
41. Stores and Supplies for Nebraska	527,603.00
42. General Expenditures	6,222,814.00
39. Inspection and Purchase of Equipment	.....
Grand Total	$46,724,888.00

459 **Defendants' Exhibit No. 5.**

Defendants offered in evidence Defendants' Exhibit 5 being page 474 of the printed volume being Fourth Annual Report of the Nebraska State Railway Commission, as follows:

Physical Value for July 1, 1909, of Chicago, St. Paul, Minneapolis & Omaha Railway Company's Property.

Miles of Roadway, 306.10. Miles of Track, 369.93.

Subject.	Respondent's valuation, repro. new.
1. Right of Way and Station Grounds	$746,985.95
2. Real Estate	1,339,321.90
5. Bridges, Trestles and Culverts	1,530,137.11
6. Ties	609,752.23
7. Rails	749,279.79
8. Frogs and Switches	1,136,867.01
9. Track Fastenings, etc	39,085.54
0. Ballast	205,723.84
1. Track Laying and Surfacing	249,125.30
2. Roadway Tools	215,894.25
3. Fencing—Right of Way	5,032.50
Crossings and Signs	91,650.94
Interlocking and other Signals	9,497.63
Station Bldgs. and Fixtures	1,342.00
Shops, Engine Houses and Turntables	191,206.00
Shop Machinery and Tools	47,195.69
Water Stations	9,015.45
Fuel Stations	54,265.00
Steam Power Plants	8,551.43
Misc. Structures	1,392.38
Engineering and Superintendence	63,655.50
Steam Locomotives	328,723.98
Passenger Cars	500,000.00
Freight Cars	154,586.00
Work and Floating Equipment	740,269.00
Rent Repairs of Equipment	41,983.00
Transportation of Material	.....
Stores and Supplies for Nebraska	312,345.41
General Expenditures—Contingencies	136,405.96
	907,053.94
Grand Total	$10,426,344.73

460 In connection with the offer of defendants' Exhibit 4 and defendants' Exhibit 5, the following offer was made:

"Mr. Lamaster: We offer page 471 of the record of the Annual Report of the State Railway Commission for the year ending December 31, 1911, as being a statement by the C. & N. W. of reproduction new cost as of July 1, 1909. Now, Mr. Dressler, do you agree that it may be used without any further reference, for that purpose?

Mr. Dressler: I do not object to the showing in these figures for what they are but I do object to the offer as incompetent and too remote to be any evidence whatever of the value for the year 1922.

Judge Munger: Does that report purport to show anything for depreciation?

Mr. Dressler: No sir.

Judge Munger: Reproduction new cost without depreciation.

Mr. Dressler: Yes sir."

Affidavit of Ulysses G. Powell.

Defendants offered and there was received in evidence affidavit of Ulysses G. Powell, as follows:

"Ulysses G. Powell being first duly sworn, deposes and says, that he is the same Ulysses G. Powell who has submitted other affidavits in these proceedings. He further says as follows:

1. That he is familiar with the unit costs of material and labor used by steam railroads that operated lines of road in the State of Nebraska during the past ten years.

2. That the average cost of material used in the construction of roadway and equipment facilities in the State of Nebraska, for the year 1921 was between 155 and 165 per cent of costs of similar material in 1913.

3. That the plaintiff company paid $30.35 per gross ton for new open hearth 90 lb. per yard steel rails laid by plaintiff on its system of railroads in the State of Nebraska during the year 1911. That the plaintiff company paid $48.00 per gross ton for the same class and weight of rail laid in Nebraska during the year 1921.

4. That the plaintiff company paid for ties used in operation and construction of its railroad in the State of Nebraska during the years 1911 and 1921 as follows:

	1911.	1921.
New oak ties untreated	$.61	$1.47
New pine ties treated	$.77	$1.47

461 The defendants offered in evidence their Exhibit 9, being the testimony given by Mr. Don L. Love, adduced by them during the trial of the 1921 tax suit of the Chicago & Northwestern Railway Company and the Chicago St. Paul, Minneapolis & Omaha

Railway Company versus William H. Osborne et al., in this court. The testimony of Mr. Love is in substance as follows:

Defendants' Exhibit No. 9.

I am one of the directors and treasurer of the Lincoln Joint Stock Land Bank, have occupied that position since 1918 when the bank was organized; was engaged with the Lincoln Trust Company, a financial institution for about ten years prior to that time. The Lincoln Joint Stock Land Bank conducts a farm loan business under the Federal Farm Loan Act, confining its operations to Nebraska and Iowa. It has now between twenty-two and twenty-three millions in loans. It is limited under the law to a loan of fifty per cent of the appraised value of the farm, the loans actually run about forty per cent. The appraisal is made by Federal appraisers appointed by the Board at Washington. After the appraisal is made it goes to the executive committee of the bank. If they approve the report the loan is made. The limit is fifty thousand dollars to one person and not to exceed one hundred dollars an acre on the land. In
462 1917 Land values in Nebraska began to advance rapidly culminating in the fall of 1919 or in the spring of 1920. During that period the increase was from fifty per cent to a hundred per cent. The actual decline in land values began probably in the early spring of 1920 and is still continuing. Between the spring of 1920 and April 1st or May 1st, of 1921, there were practically no sales of lands by which to judge just what the decline was, except forced sales. The reason that the sales stopped was because there was a general decline that began about that time on everything and especially in farm products. By the fall of 1920 farm products had fallen off, corn from nearly two dollars a bushel to twenty cents, and other agricultural products had fallen but not in that proportion. Corn had the greatest fall of all. The income from land is one of the things that is taken into account in making loans. The average crop of 1920, when it was ready for market in the fall of 1920 or winter of 1921 would hardly pay expenses. There was a loss—the 1920 crop was sold at an actual loss of the cost of production. The same condition continued until the spring of 1922.

Upon cross examination: Farms have a value as homes for the owners entirely aside from the revenue produced. In Nebraska hogs constitute a substantial part of the product of the farm and the price of hogs, even during 1920 was such that if a farmer fed his
463 crop to hogs he could realize very much more per bushel from the corn than the market price of corn, but most farms were depleted of hogs. The situation was that the farmers thought they couldn't afford to feed a dollar eighty or two dollars corn to hogs; therefore they didn't raise hogs in 1919 and early in 1920, and at the end of 1920-1921, it left them without much stock on the farm, that was one great trouble.

During 1920 our bank was prevented from making loans owing to an action against farm loan banks in Washington; then the

market was such that we couldn't sell bonds and we didn't actually do any business until about December 1, 1921. Applications for loans were numerous in 1920; the loan part of the real estate business being heavy and the bank could have made loans if it had sold bonds and had had available funds.

Upon re-direct: Interest rates were very high from the spring of 1920 through 1921; interest rates went up on farm loans beginning in 1918 and during that pre-war period was five percent, that was the best farm loan in Nebraska. During the period up to 1919 or early in 1920 interest went as high as seven per cent and commission beside. It reached its height in 1919 and early in 1920 and continued through 1920 until early in 1921. It began to go
464 down again the middle of 1921. Interest rates went up because the farm loan banks could not operate insurance companies and private companies put up their interest rates to the highest point, but it was probably not wholly due to that Money was in great demand and scarce.

Upon recross-examination: The maximum interest charge is fixed for the joint land banks at six per cent without commission.

Upon redirect examination: The loan companies and large insurance companies are guided in making their loans by the values in 1916, which we call the nearest approach we can get to present prices, that is, what land should be worth now.

Defendants offered in evidence their Exhibit 10, being the testimony of Mr. Herman A. Penner, adduced during the trial in this court of the 1921 tax suit of the Chicago & Northwestern Railway and the Chicago, St. Paul, Minneapolis & Omaha Railway against William H. Osborne, et al., who testified as follows:

Defendants' Exhibit No. 10.

I am a resident of Omaha, have lived here seven years and have been connected with the Peters Trust Company as assistant secretary during that period. Am familiar with the methods pursued
465 by that company in making loans; it is chiefly engaged in making farm loans and has about 36 million dollars of loans, over thirty million of which are farm loans, chiefly in Nebraska. Our general method of arriving at the value of land is as follows: we are the correspondents for the Prudential Insurance Company for this territory. A year ago when crop values were low we found it difficulty to arrive at a fair value of farm lands. There was nothing selling. Farms could not be appraised according to income. The Prudential Insurance Company at that time adopted the policy under which the farm lands were appraised at about the value of five years ago; they went back to the old valuation of 1916. That basis of valuation was used because we could not use the high price valuations; we had nothing else to base our values upon as there was no sale and the income was not sufficient; we made an investigation as to income; it was easy to figure out with corn selling at what it did and the farmers not willing even to harvest it; it was certainly not an income producing proposition. It makes a difference whether

corn is fifteen cents a bushel or a dollar and a half a bushel. The income was so small that we couldn't use it as a basis at all. The Prudential Insurance Company will act on applications up to fifty per cent of the appraised value of land exclusive of buildings,
466 but in no case is a loan made to exceed one hundred dollars an acre, and that on the very best of land. We operate as a trust company under the Nebraska law and are not supposed to loan in excess of fifty per cent of the value. Insurance Companies have a general understanding as to loan conditions and loan values. Upon Cross examination: In making loans we have the borrower's statement, we have the statement of the bankers, the statement of two sworn local people, we have our own appraiser, and we have our notes on land valuation for thirty years. We have been in operation for thirty years, so we have those things all to guide us as to our valuations. Fifty per cent is the limit exclusive of improvements. Our appraisers give us the value of the land and the value of the buildings and we go as high as fifty per cent on the land valuation. Where there are no buildings we will not go quite as high, ordinarily.

Defendants offered in evidence their Exhibit 8, being the testimony of Mr. U. G. P-well, offered at the trial in this court of the 1921 Tax Case of the Chicago & Northwestern Railway Company and the Chicago, St. Paul, Minneapolis & Omaha Railway Company against William H. Osborne, et al.

Defendants' Exhibit No. 8.

I am a public accountant, reside in Lincoln, Nebraska; for
467 twelve years chief accountant for the Nebraska State Railway Commission.

I have been connected with a large number of important cases before the Interstate Commerce Commission and before the courts, for instance the Rock Island two cent fare case, the Missouri Pacific rate case, I. & S. Docket No. 555, I. & S. Docket No. 600, which were the Western Passenger and Freight cases, and have been in charge of rate work for a number of state regulatory commissions, such as Ex Parte No. 57, 1920 express case, 1922 express case, and participated in the general preparation of the Minnesota Rate cases, particularly that part of the proof covering the expense statement, in the brief on behalf of the state commissions in the Supreme Court of the United States. I am familiar with the valuation proceedings by the Nebraska State Railway Commission involving the Chicago & North Western Railway company and the Chicago, St. Paul, Minneapolis & Omaha Railway company. The two companies made reports to the Nebraska State Railway Commission in the valuation proceedings, which reports I have examined. Each one of the plaintiffs was required to make report of all its physical property in Nebraska as of July 1, 1909, together with allocation of all that part of its equipment and its material and supplies, properly assignable to Nebraska. Since that date the plaintiffs should have made reports each year to the Nebraska State Railway Commission showing the

net addition and betterments and the amount of equipment and the amount of stores and supplies properly assignable to Nebraska. They have made such reports for each of the years 1909 to 1920, inclusive, except for the years 1910 and 1911. I have examined all of these annual reports. In making my computation I deducted in each instance the amount of equipment and the amount of material, and supplies shown in the 1909 return, this for the reason that they are fluctuating items. I took the Chicago & North Western Railway company's report for 1909 and subtracted the amount of equipment and the amount of material and supplies and added to it the net additions and betterments year by year from 1909 to 1920, inclusive. All of those figures come from the annual report made by that company to the Nebraska State Railway Commission except for the years 1910 and 1911. The figures for those two years I got from the general offices of the Chicago & North Western Railway company in Chicago. I did the same in the case of the
467½ Chicago, St. Paul, Minneapolis & Omaha Railway company except that for the two years 1910 and 1911, I did not make an investigation in their general offices but took an average of the other years for each of those two years. Then to the amount of the property as shown by the 1909 report I added the net amount of additions and betterments for each one of the years 1909 to 1920 inclusive. I further added an amount for equipment based on the number of railway miles in Nebraska as compared with the entire system of the company, that being the method employed by the company in making its 1909 report. To this amount I added five per cent as working capital, materials and supplies, and the necessary funds to carry accounts receivable. I prorated the equipment as of December 31, 1920, in the same manner as the company prorated in its 1909 report, that is, on a roadway mile basis. I arrived at a final figure of $61,714,320 as the reproduction cost new in 1909 as reported by the company plus additions and betterments up to December 1, 1920. The results of my investigation are embodied in defendants' Exhibit No. 1, now offered in connection with this testimony. None of the figures in the tabulation are mine. They are taken from the records of the Chicago and North Western Railway company; except the five per cent for working capital and material and supplies that is my estimate for those accounts and is taken as that is the amount usually used by the Nebraska State Railway Commission in determining rate cases as representing working capital. It is also used by other regulatory bodies. I made a similar investigation with regard to the Chicago, St. Paul, Minneapolis & Omaha Railway company with regard to its 1909 report and for the subsequent years in the same manner I investigated the Chicago & North Western Railway company's reports, and prepared a tabulation in the same manner as in the case of the Chicago & North Western Railway company, making the estimate of five per cent to cover supplies and working capital, with the result that the final figure is $14,480,465.52, which tabulation is embodied in defendants' Exhibit No. 2, now offered in connection with my testimony. (Both Exhibits Nos. 1 and 2 being admitted by the court.)

In the District Court of the United States for the District of Nebraska, Lincoln Division.

Chicago & North Western Railway Company, Complainant,

vs.

W. H. Osborne, Jr., as State Tax Commissioner of the State of Nebraska, et al., Defendants.

Estimated Cost of Complainant's Property in Nebraska December 31, 1920.

Defendants' Exhibit No. 1.

Column.	Line No.	R. R. valuation repro. new July 1, 1909. 1.	Net cost add. & bett. 1909–1920.* 2.	Est. cost pres. prop. Dec. 31, 1920. 3.
Rdwy. & Sta. Grounds	1	$7,014,369.00	$37,317.27	$7,051,686.27
Grading	2	5,873,154.00	207,150.35	6,080,304.35
Bridges, Trestles & Culv	3	2,658,121.00	923,608.98	3,581,729.98
Ties	4	1,992,107.00	40,486.13	2,032,593.13
Rails	5	3,533,228.00	237,133.51	3,770,361.51
Other Track Matl	6	806,277.00	292,653.41	1,098,930.41
Ballast	7	704,439.00	186,082.51	890,521.51
Track Laying, etc	8	1,286,016.00	33,812.12	1,319,828.12
Rdwy.—Bldgs. & Tools	9	19,920.00	22,917.71	42,857.71
Fencing—Right of Way	10	315,946.00	2,386.52	318,332.52
Crossings & Signs	11	141,150.00	57,623.47	198,773.47
Signals	12	22,389.00	20,474.02	42,863.02

*Authority—Annual Reports to Nebraska State Railway Commission.

Defendants' Exhibit No. 1—Continued.

Column.	Line No.	R. R. valuation repro. new July 1, 1909. 1.	Net cost add. & bett. 1909–1920.* 2.	Est. cost pres. prop. Dec. 31, 1920. 3.
Tel. & Tel. Lines	13	6,245.00	94,159.29	100,404.29
Bldgs. & Fixtures	14	755,821.00	289,822.03	1,045,643.03
Shops, Eng. House & Turn.	15	272,679.00	199,423.16	472,102.16
Shop Mch. & Tools	16	28,946.00	56,342.47	85,288.47
Fuel & Water Stations	17	402,067.00	126,339.95	528,406.95
Misc. Structures	18	728,545.00	30,049.61	758,594.61
Cost of Road Purchased	19	.....	72,949.13 Cr.	72,949.13 Cr.
Adapt. & Solid	20	2,223,212.00	.....	2,223,212.00
Assess. for Public Imp.	21	.....	47,684.43	47,684.43
Eng. & Supt	22	1,302,057.00	9,076.55	1,311,133.55
	23	30,086,506.00	2,841,818.40	32,928,324.40
Transport. of Matl	24	3,766,976.00	783,121.00**	4,550,097.00**
Rent & Repairs of Equip	25	117,623.00	.....	117,623.00
General Expenditures	26	6,222,814.00	20,750.32	6,243,564.32
Total	27	40,193,919.00	3,645,689.72	43,839,608.72

Equipment.

Steam Locomotives	28	.....		20.35%	3,039,460.67
Pass. Cars	29	.....		11.68%	1,744,516.00
Freight Cars	30	.....		67.42%	10,069,800.43
Work & Floating Equipment	31	.....		.55%	82,147.58
Total Equipment	32		To System	12.582%	14,935,924.68#
Work. Cap. (Stores & Sup.)	33	.....	.....		58,775,533.40
	34		Est.	5%	2,938,776.60
Total Nebraska Prop.	35	.....			$61,714,310.00

*Authority—Annual Reports to Nebraska State Railway Commission.

**Eliminating items on lines Nos. 1, 2, 8, 19, 20, 21, 22 (est. cost figured on $14,967,424.81 at 30.4%.

#Total equipment based on % of mi. owned Nebraska to total system which is 12.582%. Equipment entire system, letter of C. D. Brandriff March 2, 1922, is $118,051,886.54. Amount to Nebraska is 13.582% of $118,051,886.54 or $14,935,924.68 which is spread among classes of equipment on rates of R. R. Val. 1909

In the District Court of the United States for the District of Nebraska, Lincoln Division.

Chicago, St. Paul, Minneapolis & Omaha Railway Company, Complainant,

vs.

W. H. Osborne, Jr., as State Tax Commissioner of the State of Nebraska, et al., Defendants.

Estimated Cost of Complainant's Property in Nebraska December 31, 1920.

Defendants' Exhibit No. 2.

Column.	Line No.	R. R. valuation repro. new July 1, 1909. 1.	Net add. & bett. 1910–1920.* 2.	Est. cost pres. prop. Dec. 31, 1920. 3.
Rdwy. & Sta. Grounds	1	$746,985.95	$883.92	$747,869.87
Real Estate	2	1,339,321.90	.....	1,339,321.90
Grading	3	1,530,137.11	113,537.17	1,643,674.28
Bridges, Trestles & Culverts	4	609,752.23	221,728.12	831,480.35
Ties	5	749,279.79	23,544.59	772,824.38
Rails	6	1,136,867.01	63,268.84	1,200,135.85
Other Track Matl.	7	244,809.38	68,417.84	313,227.22
Ballast	8	249,125.30	37,151.73	286,277.03
Track Laying & Surfacing	9	215,894.25	20,438.27	236,332.52
Roadway Tools	10	5,032.50	6,905.87	11,938.37
Fencing—Right of Way	11	91,650.94	380.71	92,031.65
Crossings & Signs	12	9,497.63	122,913.38	132,411.01
Tel. & Tel. Lines	13	.....	1,566.37	1,566.37

Interlocking and Other Sig.	14	1,342.00	1,148.51	2,490.51
Sta. Bldgs. & Fixtures	15	191,206.00	159,228.59	350,434.59
Shops, Eng. Houses & Turn	16	47,195.69	70,450.41	117,646.10
Shop Mach. & Tools	17	9,015.45	746.81	9,762.26
Water Stations	18	54,265.00	23,631.56	77,896.56
Fuel Stations	19	8,551.43	22,859.01	31,410.44
Steam Power Plants	20	1,392.38	5,821.87	7,214.25
Misc. Structures	21	63,655.50	1,250.73	64,906.23
Assess. for Pub. Imp	22	.....	19,434.30	19,434.30
Eng. & Supt	23	328,723.98	13,020.95	341,744.93
Total	24	7,633,701.42	998,329.55	8,632,030.97
Transp. of Matl	25	312,345.41	74,553.01**	386,898.42**
General Expend	26	907,053.94	13,246.76	920,300.70
	27	8,853,100.77	1,086,129.32	9,939,230.09
Equipment.				
Steam Locomotives	28	.....	34.80%	1,340,387.93
Passenger Cars	29	.....	10.76%	414,441.78
Freight Cars	30	.....	51.52%	1,984,390.41
Work & Floating Equip	31	.....	2.92%	112,469.34
Total Equipment	32		To System 18.255%	3,851,689.46#

*Authority—Annual reports to Nebraska State Railway Commission. A. & B. for 1910 and 1911 estimated as average for years 1912-1920.

**Eliminating items on lines 1, 2, 3, 9, 22 and 23 (est. cost figured on $4,303,653.17 at 8.99%).

#Total equipment on system given in letter of Charles Jensch April 1, 1922, for Dec. 31, 1920, to be $21,099,367.08. Equipment to Nebraska divided on miles owned Nebraska to System.

Defendants' Exhibit No. 2—Continued.

Column.	Line No.	R. R. valuation repro. new July 1, 1909. 1.	Net add. & bett. 1910–1920.* 2.	Est. cost pres. prop. Dec. 31, 1920. 3.
	33	.....	.....	13,790,919.55
Work Capital (Stores & Sup.)	34		Est. 5%	689,545.97
	35	.....	.....	$14,480,465.52

*Authority—Annual reports to Nebraska State Railway Commission. A. & B. for 1910 and 1911 estimated as average for years 1912-1920.

470 I have kept my self generally informed as to the costs of material and supplies for the construction and maintenance of railroads and have recently made an investigation in regard thereto in connection with the Omaha & Council Bluffs Street Railway company in Omaha. That company does not use steam locomo-
471 tives, but uses large quantities of rails, such as steam railroads use. That investigation did not include passenger equipment used by steam railways. The rails used by that company compare favorably with those used by the Chicago & North Western Railway company in this state. Some of them are 62 pound and some of them are 60 pound rails. The ties are about the same as used in railroad construction. During the last five years rails have gone from $28 per ton to about $48 per ton.

I made an investigation of the property investment account of the Chicago & North Western Railway Company as to whether or not it correctly reflected the actual investments made by the company in connection with I. and S. Docket 555, the Western Freight case. My investigation covered a period of sixteen years in regard to this item, that is, from December 31, 1898, to December 31, 1914. The investigation was made at the headquarters of the Chicago & North Western Railway Company in Chicago. I had a number of assistants at the time and superintended the work. As a result of my investigation I found that the property investment account did not correctly show the actual investment in property during that period. The method pursued by the company is outlined on pages 16 and 26 of the annual report of the board of directors to the stockholders as of June 30, 1906. In that year there was spent for construction $9,444,024.67. Of that amount there was charged to road and equipment account $3,311,024.67. Six million, one hundred thirty-three thousand dollars was charged to surplus account. I am familiar with the Interstate Commerce Commission's method of railway accounting and able to determine how much money was spent in additions and betterments for each year that was charged to property investment account and how much was not so charged. The study I made divided the period of sixteen years into two parts, 1899 to 1906 inclusive, and 1907 to 1914, both inclusive, giving an eight year period in each instance. For the first period the total amount of money charged to the surplus account or income account by the company was $37,681,940.66. In the last eight year period no such items were charged. All additions and betterments were charged from January 1, 1907, to plant and roadway account. During the first eight years $37,618,940.66 was expended that was not included in the property investment account.

This sum came out of the income account for the most
472 part. A small part of it came from the sinking fund account. No part of this sum appears in the $451,000,000 that was reported by the company to the Interstate Commerce Commission in connection with Ex Parte 74 except there was some recasting of the equipment account by the company in recent years and some of it may have been included in that.

The following table shows the figures paid by the Chicago & North Western Railway Company for rails on the dates stated:

June 30, 1916	$30.8
December 31, 1916	30.7
December 31, 1917	30.4
December 31, 1918	31.8
December 31, 1919	39.8
December 31, 1920	40.1
December 31, 1921	47.6

It paid for ties, as shown by the following table:

June 30, 1915	66.98 cents
June 30, 1916	68.12 cents
December 31, 1916	68.12 cents
December 31, 1917	67.42 cents
December 31, 1918	82.29 cents
December 31, 1919	86.56 cents
December 31, 1920	84.41 cents
December 31, 1920	$1.33

Since 1916 lumber has advanced from 200 to 212 per cent and other building materials have advanced over 1916 prices from 60 to 200 per cent. Prices of track fastenings and all kinds of structural steel follow pretty closely to the rail market. The lines of the Chicago & North Western Railway Company as they are today in Nebraska were practically all completed by 1888. They were principally built from 1884 to 1888 except some lines that were purchased by the company. The lines of the Chicago, St. Paul, Minneapolis & Omaha Railway Company were constructed about the same time. The figures I have presented here with regard to the valuations of these two plaintiffs have not taken into account at all the increase of value of the lands, right-of-way and station grounds. I have simply given the cost figures in each instance as reported by the respective companies. Nor do the figures presented by me take into account any increased unit cost of rails or ties or any of the other elements that go to make up the railroad property except as such higher costs are represented in the additions and betterments made from 1909 down to date, which would be a very small portion of the total.

473 Cross-examination:

I do not wish to be understood as saying that I think $61,714,57[illegible] is the value. I just simply say that is the result of the tabulations. It is difficult to say what the valuation is. My method of arriving at the valuation is to take the report of the company to the physical valuation department of the State Railway Commission. Shortly after the organization of the Commission blanks for reports by the carriers were drafted. The physical valuation department took the figures as returned by the company as to each component part of the

company located in this state and computed the reproduction cost new of the same property, stating the condition per cent of the property and the valuation of the property based on its condition. Roadway and station grounds account was stated by the company to be $7,014,369 in the report it made in 1909 to the Nebraska State Railway Commission. The engineering department allowed as against that item $4,039,688.98. The department also found another figure not including the cost of acquisition severance damages of $2,566,862. The $7,014,369, reported by the company, included cost of acquisition and severance damages. The net result was that the engineering department allowed a grand total valuation including equipment of $38,195,225.31, while the figures given on Exhibit 1 are for everything except equipment is $40,193,919. I have allocated equipment on a straight road mileage basis. Dividing cars among the several classes, passenger, freight and work-train equipment would reduce the allocation of equipment in Nebraska to $7,593,883.09. I cannot say how much of the $37,000,000, invested in roadway and equipment, represented replacements and how much was for additions and betterments. No depreciation account as to equipment was kept prior to 1907. In order to find out what proportion of the $37,000,000 actually represented additions and betterments one would have to have some account of the retirements and the depreciation during that period as to the equipment and whatever that amounted to would have to be deducted from the $37,000,000. The $37,000,000 extended over a period of eight years. The Chicago & North Western Railway Company has always been understood to be a low property investment account road. The Burlington the same way. The amount they charged to roadway and equipment was really small. In Ex Parte 74 the Interstate Commerce Commission had to consider the western district of the United States, in which there was a number of roads which had charged into their property account sums very much in excess of the actual expenditures for road and equipment, and it was a leveling matter that the Interstate Commerce Commission had to deal with in that decision. The Chicago & North Western Railway Company has very little hundred pound rail in the state of Nebraska, if any. It has some 100 pound rail elsewhere. I am acquainted with the physical condition of the Chicago & North Western Railway Company across the state of Iowa and across the State of Illinois. I think there is 90 pound rail, possibly a hundred pound some of it—90 to 100 pound. That is also true on the four-track system between Chicago and Milwaukee. I think that is substantially all 100 pound rail. There is heavy rail between Chicago and Elroy Wisconsin and in that territory it is all rock ballast, with oak ties. There are block signals on the line in Illinois and between Chicago and Milwaukee. I do not consider that mile for mile, a mile of the Chicago & North Western Railway in Nebraska is worth as much as a mile in Iowa, but I have been describing the main lines. In Illinois there would be a greater difference as there are not so many branch lines in Illinois as in Iowa or Nebraska. I am not acquainted with the physical property of the company in Michigan I know there is a very ma-

terial investment in the iron ore docks at Escanaba, Michigan. I do not recall the amount. I know there is a very large terminal elevator at Milwaukee and a very large terminal elevator at Calumet Lake in Chicago, which is generally understood to be the largest terminal grain elevator in the world. I know of the large repair shops at New Butler, Wisconsin. There are no shops, elevators, or tracks or double track and block signals in the state of Nebraska that would compare to those elements just described in the state of Wisconsin. There are a good many branch lines in Wisconsin that I do not think are very much better than the lines in Nebraska, but my judgment is that the lines in Nebraska are not worth as much mile for mile as the lines in Wisconsin. I am acquainted with the passenger terminal of the company in Chicago. It has twenty acres occupied by the main passenger terminal and up to 1914 the company had expended about $29,000,000 in building a terminal. The company also owns property at its old depot site and there are
475 freight houses on each side of State street; that there is a considerable tract of land there and that the lower end of it is within four blocks of Marshall-Fields store. The company also has large material yards in Chicago. I should say a mile of roadway in Wisconsin, Illinois or Iowa is worth more than a mile of roadway in Nebraska.

Redirect:

The Chicago & North Western Railway Company has a low property investment account as compared with other roads in the western district. One hundred pound and seventy-five pound rail are approximately the same price per ton. The prices vary only with specially rolled rails. The major portion of the rail on the Chicago & North Western railway in Nebraska is 60 pound rail. There is some 80 pound. The labor of laying the rail would be approximately the same. A second track adds from 60 to 70 per cent of the cost of the first track, not including the way and structures, not including right-of-way. The right-of-way does not have to be widened any on account of the laying of the second track except where the company would need an additional amount of earth or things of that kind. I think the Chicago & North Western road is fully as well maintained now as it was in 1909. Eighty per cent of the cost of the property is considered very good condition for almost any class of public utilities property. This is assuming that the costs remain unchanged. I do not claim that the unit cost at the book prices during the war are proper elements of value as a basis on which to determine value of public utilities or railroad property. I think the proper basis is unit prices as relating to the property put in place by different years; that the cost of putting the property in place is a proper basis upon which to calculate rates; that the company ought to have a return on the money it invested in 1920, but that 1920 prices of material and labor should not be used to calculate the property put in place in 1910. If you can get the figures to work with it is better to take the prices during the period the property was constructed. Failing in

that, take five or six years average prices with a fair representation of the level of prices prior to 1914 would be a fair index fig-
476 ure. That is the basis the Interstate Commerce Commission is now using. It also takes into consideration in its valuation the element of depreciation, that being provided in the Physical Valuation Act.

Q. I understand you to say, Mr. Powell, that predicated upon the formula which you have given here as defendants' Exhibit 1, the valuation for the Northwestern Railway Property in the State of Nebraska is $61,714,310.00—am I right about that?

The Court: He doesn't say anything about value. He presents here an estimated cost study, a reproduction study or whatever it is. He does not say anything about value.

* * * * * * *

The Witness: I do not think that a mile of track in the State of Nebraska is worth as much as a mile of track in the states of Wisconsin, Illinois and Iowa * * * The figures I have used in Exhibit 1 do not consider the subject of depreciation.

Defendants offered in evidence defendants' Exhibit 11, being a certified copy of the record of the Nebraska State Railway Commission with respect to the physical valuation of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, showing a finding of present value as of July 1, 1909, of $8,728,936.31.

Defendants offered in evidence defendants' Exhibit 12, being a certified copy of the record of the Nebraska State Railway Commission with respect to the physical valuation of the Chicago & Northwestern Railway Company showing that there was no final finding of the value made and that nothing further of record appears with reference to such valuation.

Defendants offered in evidence defendants' Exhibit 13 being a compilation of 58 affidavits from twenty counties in the state, being affidavits of residents of such counties and showing an average market value of the real estate as compared with the assessed value for 1922, as 74.28 per cent, and that during the years 1920, 1921 and 1922, real estate values decreased in various percentages from 18 to 50 per cent.

Defendants offered in evidence defendants Exhibit 14, consisting of nineteen affidavits of land owners in various counties in Nebraska showing the ratio of assessed value to actual value of 66.85 per cent.

Defendants offered in evidence defendants' Exhibit 16, being a compilation of affidavits of county clerks and registers of deeds in forty Nebraska counties showing land transfers of rural real
477 estate by warranty deeds, sheriff's deeds and referee's deeds during the period from July 1, 1921 to July 1, 1922, which showed that for that year the ratio of assessed value to selling price was 60.95 per cent and taking the year 1922, from January 1 to July 1, gives a percentage of 65.40 per cent of the assessed value to selling value, and from July, 1921 to January 1, 1922, the ratio

of assessed value to selling price was 65.40 per cent. The total acres involved was 429,098 and the total consideration thereof, $24,233,555, and selling price per acre $56.47. The assessed value was $14,869,361.00, and the assessed value per acre was $34.42, showing a ratio of 60.95 per cent of the assessed value to selling price.

Defendants offered in evidence Exhibit 17, being the affidavit of A. M. Clark, as follows:

Defendants' Exhibit No. 17.

A. M. Clark, being first duly sworn, on oath deposes and says that he is the duly elected, qualified and acting assessor of Adams County, Nebraska, that he has read the affidavit of Mr. Charles C. Parmalee, filed in this cause, and that the statement in Mr. Parmalee's affidavit that the affiant said that in an address by W. H. Osborne to the county assessors in the spring of 1922, Mr. Osborne stated that where a farm was worth $125 actual value per acre, that they should assess it at $90-$95 per acre, which would be about 70 or 75% of the actual market value, is untrue, and that affiant never heard W. H. Osborne make that statement or that statement in substance, that he never stated to Mr. Parmalee that he had heard W. H. Osborne make such statement, or that in substance, and that Mr. Parmalee's statement is untrue.

Affiant further states that the only instructions that he has had from W. H. Osborne as State Tax Commissioner were to assess property at its fair market value in accordance with the law.

Affiant further says as showing the correctness of his assessments in Adams County, Nebraka, he cites the following instances of sales

In November, 1922, a section of land about three miles from Kenesaw was sold at private sale for about 50¢ per acre less than its 1922 assessed value. On December 14th, 1922, an 80 acre tract about six miles from Hastings was sold at partition sale for about $6,000, and was assessed for 1922 at $6,500, that on the same day a 160 acre tract about six miles from Hastings was sold at about $12,000, and the 1922 assessed value of the same land was approximately $13,000.

Affiant further says that several instances have been called to his attention during the past year, where city property in Adams County has been sold for less than its 1922 assessed valuation.

478 Defendants offered in evidence defendants' Exhibit 3[illegible] being that part of page 70 of the statistics of railways in the United States relating to taxes and assessments for the year ending December 31, 1920, being the 24th annual report of the Interstate Commerce Commission, as follows:

Defendants' Exhibit No. 25.

Page 70.

Statistics of Railways in the United States.

Statement No. 39.

Taxes and Assessments for the Year Ended Dec. 31, 1920—Class I Carriers and Their Non-operating Subsidiaries.

State.	Total. Amount.	Total. Per mile of line.	Class I carriers.	Subsidiary to class I carriers.
Total United States	*$282,750,533	$1,262	$281,258,069	$1,492,464
Alabama	2,548,239	560	2,548,239	.....
Arizona	1,572,112	776	1,572,112	.....
Arkansas	3,912,137	948	3,912,137	.....
California	7,186,655	1,071	7,179,287	7,368
Colorado	3,344,291	729	3,344,091	200
Connecticut	1,974,929	1,977	1,974,929	.....
Delaware	165,372	493	164,331	1,041
Florida	2,166,797	542	2,166,797	.....
Georgia	2,481,022	455	2,481,022	.....
Idaho	3,844,290	1,500	3,844,290	.....

*Excludes $1,064,545 Canadian Taxes, $447 Cuban taxes, and credit of $1,596 not localized by states. These amounts are included in the income accounts.

Taxes and Assessments.—Continued.

State.	Total. Amount.	Total. Per mile of line.	Class I carriers.	Subsidiary to class I carriers.
Illinois	16,421,746	1,421	16,323,371	98,375
Indiana	9,422,348	1,328	9,420,707	1,641
Iowa	7,855,052	808	7,855,052	.....
Kansas	6,188,470	688	6,179,658	8,812
Kentucky	2,183,792	624	2,179,504	4,288
Louisiana	3,788,386	971	3,788,386	.....
Maine	1,724,961	831	1,724,961	.....
Maryland	2,004,186	1,591	1,991,783	12,403
Massachusetts	3,339,127	1,616	3,337,648	1,479
Michigan	7,578,625	1,083	7,578,625	.....
Minnesota	9,753,406	1,151	9,753,406	.....
Mississippi	3,611,616	942	3,611,616	.....
Missouri	3,358,579	457	3,358,579	.....
Montana	4,283,757	871	4,283,757	.....

(Second Column Same Exhibit.)

Nebraska	$4,159,281	$677	$4,159,281	.....
Nevada	1,543,485	942	1,543,485	.....
New Hampshire	1,005,430	827	1,005,430	.....
New Jersey	11,188,775	5,292	10,710,925	477,850
New Mexico	2,467,111	915	2,467,111	.....
New York	17,860,538	2,271	17,603,616	256,922

North Carolina	2,128,612	552	2,124,627	3,985
North Dakota	4,997,344	969	4,997,344	.....
Ohio	16,841,495	2,048	16,840,721	774
Oklahoma	5,462,847	864	5,461,508	1,339
480				
Oregon	2,721,507	1,060	2,721,457	50
Pennsylvania	9,342,090	945	9,281,217	60,873
Rhode Island	585,359	2,996	585,359	.....
South Carolina	1,950,592	623	1,950,592	.....
South Dakota	3,718,490	900	3,718,490	.....
Tennessee	2,583,797	702	2,582,441	1,356
Texas	5,097,866	364	5,097,087	779
Utah	1,855,786	907	1,855,786	.....
Vermont	450,543	608	450,543	.....
Virginia	4,695,253	1,129	4,694,972	281
Washington	8,794,709	1,698	8,794,709	.....
West Virginia	3,879,092	1,195	3,869,566	9,526
Wisconsin	6,875,961	995	6,874,066	1,895
Wyoming	1,212,958	686	1,212,958	.....
District of Columbia	79,120	2,291	79,120	.....
United States Government	50,542,597	226	50,001,370	541,227

End of statement No. 39.

481 Defendants offered in evidence defendants' Exhibit 26, being pages 102 to 109, inclusive, of the report of the department of agriculture of the state of Nebraska for the year 1921, as follows:

482 **Defendants' Exhibit No. 26.**

Def'ts' Ex. 27. C. W. P.

Agricultural Statistics of Nebraska for the Year 1921.

Published by State of Nebraska Department of Agriculture, Bureau of Markets and Marketing, Lincoln.

Bulletin No. 114.

Summary Corn.

Year.	Acreage.	Av. yield.	Total No. bu.	Value.
1918	6,954,061	17.7	123,298,649	$160,288,243
1919	7,039,811	25.8	182,250,823	227,813,528
1920	7,560,355	33.8	255,544,816	127,772,408
1921	7,418,700	28.1	208,732,212	45,921,086

Summary Winter Wheat.

Year.	Acreage.	Av. yield.	Total No. bu.	Value.
1918	3,015,844	11.1	33,520,047	$67,040,094.00
1919	3,716,159	14.8	55,280,969	110,561,938.00
1920	3,334,547	17.4	58,106,940	92,971,104.00
1921	3,761,683	14.4	54,340,841	46,189,714.85

483 *Summary Spring Wheat.*

Year.	Acreage.	Av. yield.	Total No. bu.	Value.
1918	811,815	11.9	9,721,793	$19,443,586.00
1919	667,572	8.5	5,699,458	11,113,943.10
1920	258,448	9.5	2,453,476	3,680,214.00
1921	205,059	11.3	2,317,881	1,854,324.80

Summary All Wheat.

Year.	Acreage.	Av. yield.	Total No. bu.	Value.
1918	3,827,659		43,241,840	$86,483,680
1919	4,383,731		61,234,602	121,675,881
1920	3,592,995		60,560,416	96,651,318
1921	3,966,742		56,658,722	48,044,039

Summary.

Horses.		Mules.		Cattle.		Hogs.		Sheep and goats.	
Number.	Value.	Number.	Value.	Number.	Value.	Number.	Value.	Number.	Value.
910,079	$81,907,110	102,192	$10,219,200	2,904,875	$213,943,510	2,038,236	$61,147,080	278,821	$3,345,852
942,561	58,297,503	94,298	8,241,472	2,673,993	124,806,234	1,806,856	42,715,495	218,958	1,223,902
879,763	56,698,709	93,438	10,700,342	2,598,057	113,778,114	1,707,092	28,204,860	236,402	1,959,740
841,095	47,105,844	99,603	7,059,527	2,411,818	79,875,741	1,712,396	18,658,993	183,778	839,318

Summary Oats.

Year.	Acreage.	Av. yield.	Total No. bu.	Value.
1918	2,530,877	22.2	56,215,487	$33,729,200.00
1919	2,133,475	32.8	70,133,995	44,184,416.85
1920	2,400,062	34.6	83,037,162	33,214,864.80
1921	2,585,084	27.1	70,273,858	12,649,294.44

Barley.

Year.	Acreage.	Av. yield.	Total No. bu.	Value.
1918	342,659	16.5	5,677,074	$4,541,659.00
1919	217,174	25.7	5,584,944	5,864,191.20
1920	255,503	29.05	7,424,615	4,454,769.00
1921	198,793	24.7	4,904,543	1,471,362.90

484

Rye.

Year.	Acreage.	Av. yield.	Total No. bu.	Value.
1918	387,596	12.9	5,037,670	$7,052,738.00
1919	408,160	12.6	5,156,629	6,187,954.80
1920	264,370	14.1	3,751,104	4,876,435.20
1921	275,466	12.7	3,495,632	2,097,379.20

Summary Potatoes.

Year.	Acreage.	Av. yield.	Total No. bu.	Value.
1918	121,432	86.4	10,497,998	$8,398,398.00
1919	103,977	55.1	5,737,312	8,605,968.00
1920	85,439	98.7	8,435,554	6,748,443.20
1921	102,074	79.92	8,158,458	7,432,612.20

Alfalfa.

Year.	Acreage.	Av. yield.	Total No. tons.	Value.
1918	1,164,941	2.1	2,527,834.5	$63,195,862.00
1919	1,180,324	2.7	3,214,999.1	64,299,982.00
1920	1,232,947	2.86	3,527,689.5	35,276,895.00
1921	1,195,562	2.36	2,828,757.0	19,801,299.00

Wild Hay.

Year.	Acreage.	Av. yield.	Total No. tons.	Value.
1918	2,587,678	.88	2,285,010.2	$43,415,193.00
1919	2,771,234	1.02	2,842,304.8	45,476,866.88
1920	2,315,359	1.02	2,319,777.4	18,558,219.20
1921	2,256,315	.84	1,897,490.0	11,384,940.00

(Here follows Summary, marked side folio page 485.)

485½ Defendants offered in evidence defendants' Exhibits 28, 29, and 30, being copies of reports by the United States Department of Commerce, as follows:

(Here follow Defendants' Exhibits Nos. 28, 29, and 30, marked side folio pages 486, 487, and 488.)

489 Defendants offered in evidence defendants' Exhibit 32, being the affidavit of W. H. Osborne, state tax commissioner, as follows:

490 **Defendants' Exhibit No. 32.**

W. H. Osborne, being first duly sworn, on oath deposes and says that he is the duly appointed and qualified Tax Commissioner of the State of Nebraska, that he has occupied such office since about April 28, 1921, that prior to that time he was secretary of the State Board of Equalization of the State of Nebraska, for more than two years, that he is generally familiar with all the methods and procedure of taxation in said state, and that he is generally acquainted with property values in the state of Nebraska and has been so acquainted for more than three years last past.

Affiant, as such officer, has charge and custody of the files and records of the State Board of Equalization which contain the full information of the assessments and taxation of all railroads
491 operating in the State of Nebraska, that the assessment of plaintiff's property used in conducting transportation for the years 1911 to 1922 inclusive, is shown in Exhibit "A," which is attached hereto and made a part hereof. The assessment of all railroads within the state is shown for the same years in Exhibit "B," which is hereto attached and made a part hereof. There has been a gradual increase in the assessed value of railroad property throughout said period due to increase in amount the larger increases in the year 1920 were due to increases in value of all items of property used in the construction of railroads and in the increase in the *the* right of way; the same is true of all property values as shown by Exhibit "C" which is attached hereto and made a part hereof.

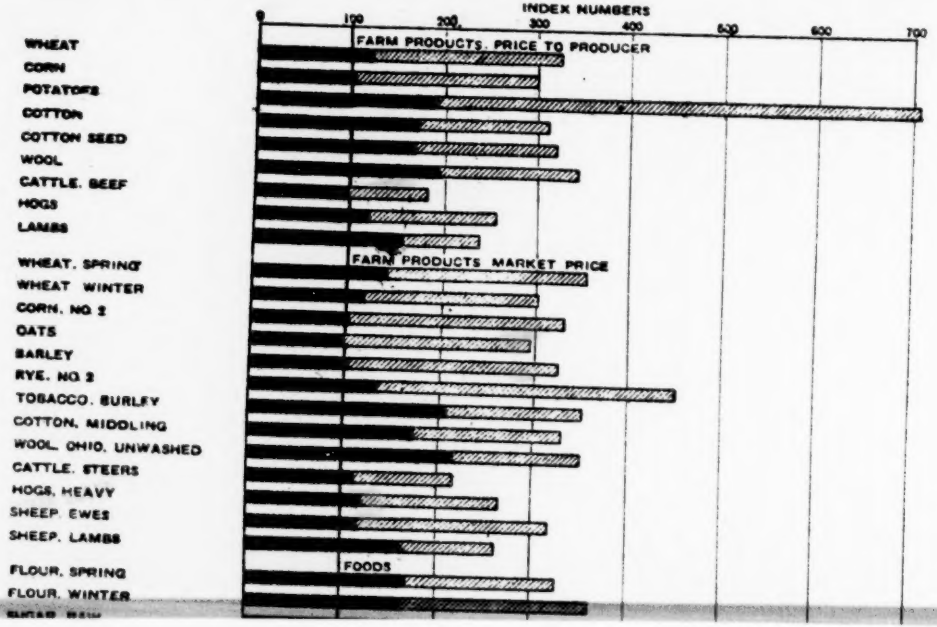
Affiant further alleges that there has been no discrimination against the property of the plaintiff, or against the property of railroads in general.

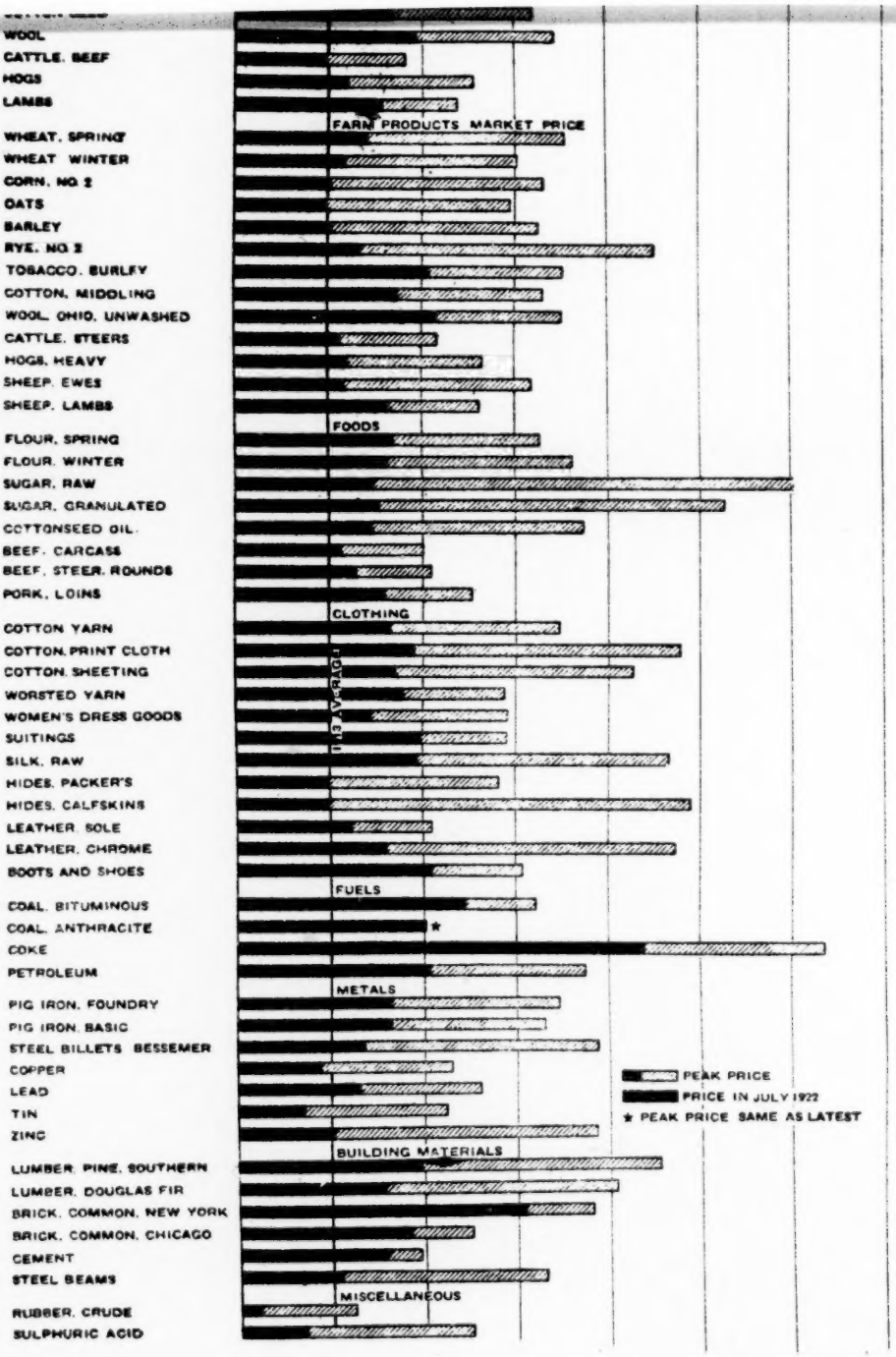
Affiant further says, that at the time of the assessment of the plaintiff's property by the State Board of Equalization, that the plaintiff was at once notified and that this action of the Board was taken on the 15th day of June, 1922, but the assessment value as determined by the Board was by this affiant certified to the County Clerks of the State on or about the 30th day of June, 1922 that if the plaintiff is now allowed to enjoin the collection of the
492 taxes levied against its property the accounts of the state and of every municipality and every county traversed by

Defendants Exhibit No. 28. 486

COMPARISON OF PRESENT WHOLESALE PRICES WITH PEAK AND PRE-WAR.

(Relative prices 1913=100.)





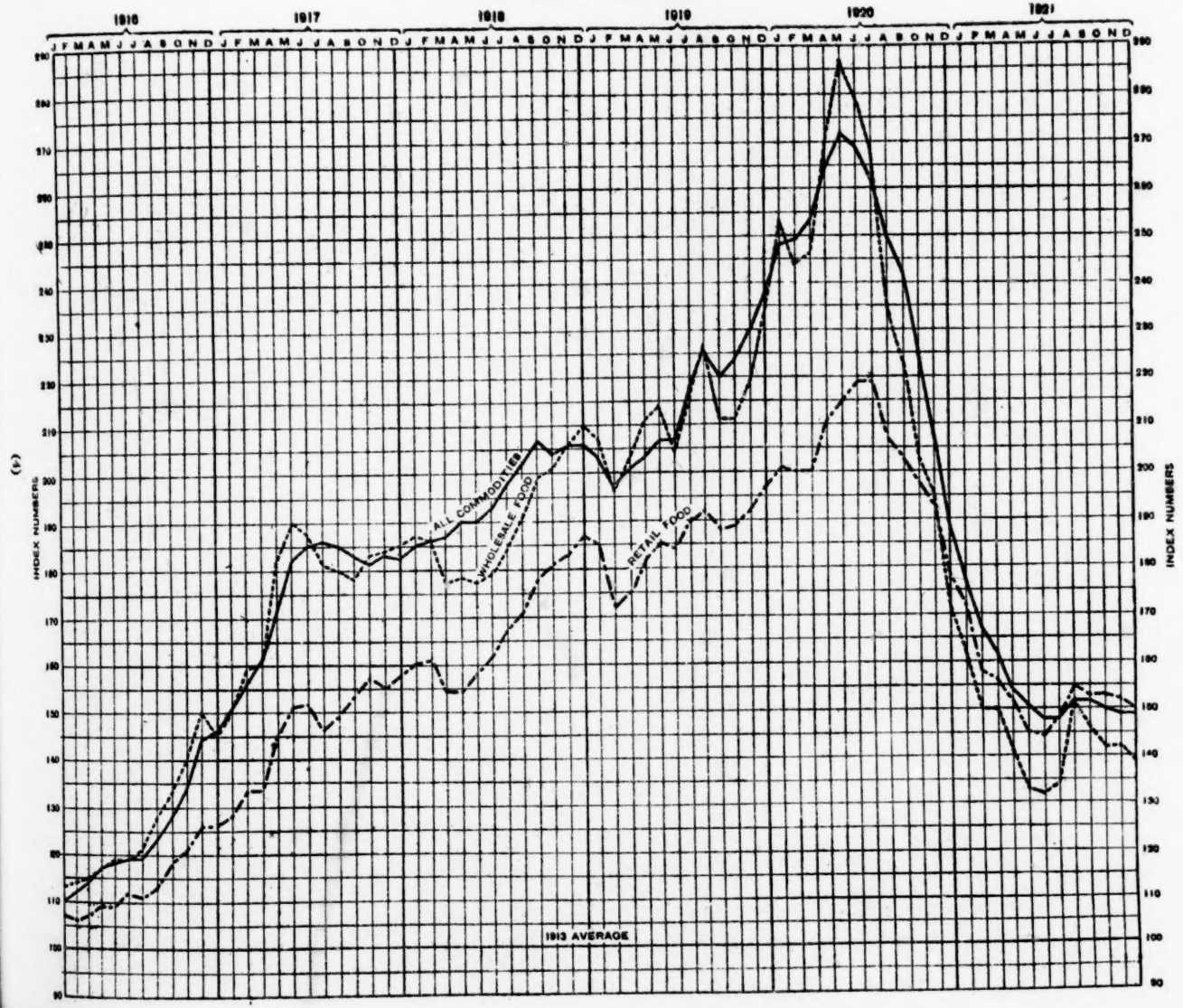
Authority: Survey of Current Business, U.S. Dept.of Commerce, No. 13, Page 4, September 1922.

Defendants Exhibit No. 29. 487

COMPARISON OF WHOLESALE AND RETAIL FOOD PRICE INDEX NUMBERS.

WITH INDEX OF ALL COMMODITIES AT WHOLESALE.

(U. S. Department of Labor Index.)

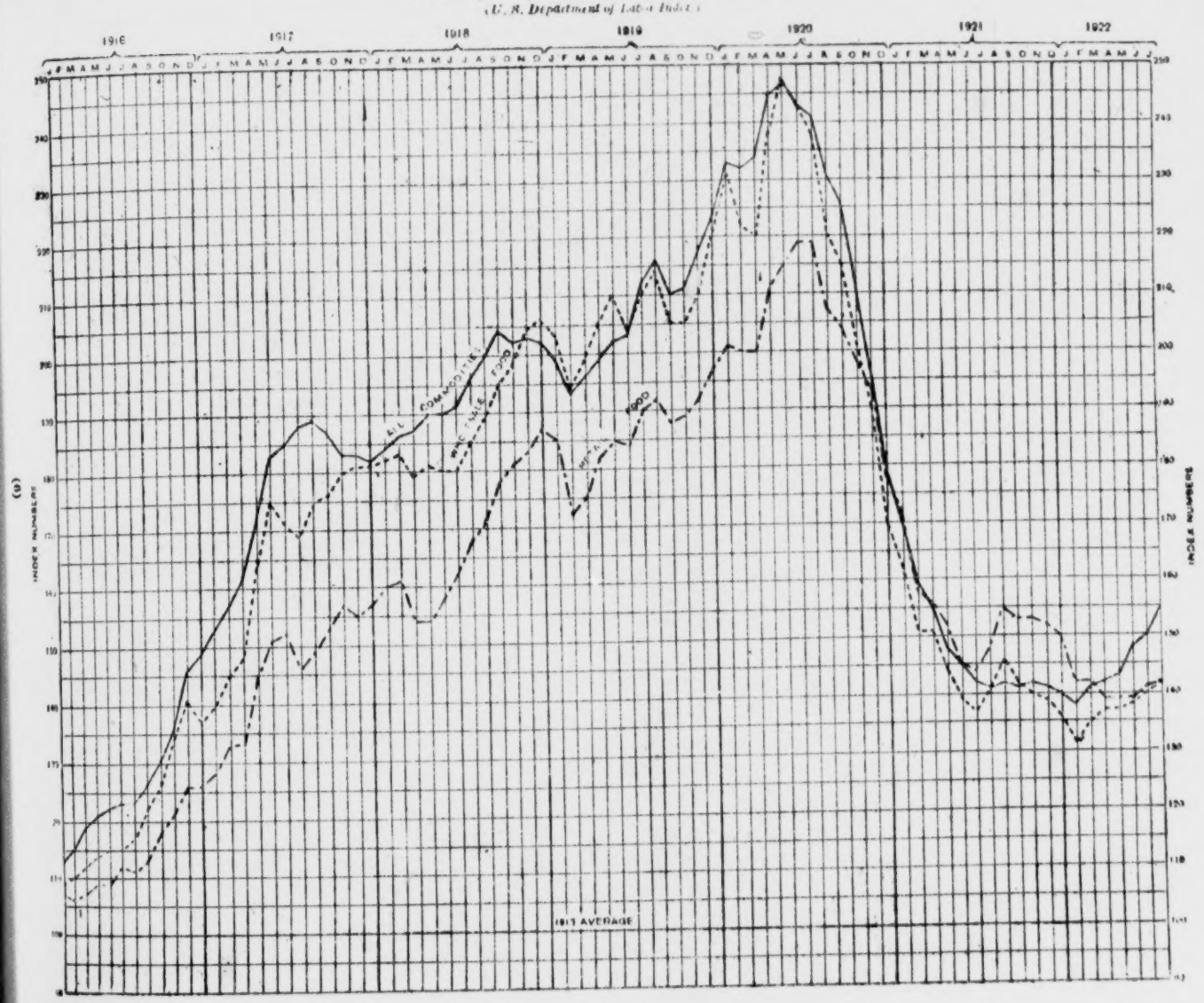


Authority; Survey of Current Business, U.S. Dept of Commerce, No. 6 January 1,1922, Page 4.

COMPARISON OF WHOLESALE AND RETAIL FOOD PRICE INDEX NUMBERS.

WITH INDEX OF ALL COMMODITIES AT WHOLESALE.

(U. S. Department of Labor Index.)



Authority: Survey of Current Business, U.S. Dept. of Commerce, No. 13, Page 6, September 1922

plaintiff's road will be thrown into confusion and the utmost difficulty will be suffered and that in many school districts there will be no funds with which to operate the schools and many of them will have to suspend at least for a considerable portion of the school year and other departments of local, county and state government will also suffer great loss and damage.

Affiant further says that he has given considerable study to the values of real estate and improvements and that it is his very best judgment that the peak of prices prevailed about the fall of 1919 and that from that time down to the assessment period of the first of April, 1922, that it is his judgment that farm lands and improvements in this state depreciated in value approximately 33¼ per cent. This affiant denies that at any time has there been any conspiracy on the part of the State Board of Equalization or the individual members thereof, to place a value upon the plaintiff's property or the property of the state in general at any other figure than the directions given to the board by the statute of this state,—namely,—at its actual cash value.

Affiant further denies that there has ever been any understanding between this affiant and the individual members of the State Board of Equalization with the assessing authorities of this state other than that contained in the uniform written instructions sent out to the assessing authorities by this affiant wherein it is therein quoted:

493

"The only instructions that I am permitted to give you in valuing this class of property is that directed to you by the statutes, namely at its actual value, and as defined in the Revenue Law, Actual Value means its actual value in the market in the ordinary course of trade."

W. H. Osborne.

Subscribed in my presence and sworn to before me this 19th day of December, 1922. R. C. Hoyt, Clerk, By John Nicholson, Deputy.

494 **Exhibit A to Osborne's Affidavit.**

Chicago, Burlington & Quincy Railroad.

EXHIBIT A,

Being Memoranda of Assessed Values of the Chicago, Burlington & Quincy Railroad in the State of Nebraska as Shown by the Records in the Office of the Tax Commissioner for the Years 1911 to 1922, *Inclusive.*

1911	$119,441,865.00	
1912	119,441,865.00	
1913	119,441,865.00	
1914	119,441,865.00	
1915	119,441,865.00	
1916	121,934,740.00	(Pencil notation right margin).
1917	121,932,625.00	
1918	121,978,640.00	
1919	122,015,515.00	9%.
1920	131,765,605.00	
1921	131,639,875.00	decrease.
1922	137,589,782.00	12% over 1913

Incre-se since 1911 is 13%.

495 **Exhibit B to Osborne's Affidavit,**

Being Memoranda of Assessed Values of Railroads in the State of Nebraska as Shown by the Records in the Office of the Tax Commissioner for the Years 1911 *to* 1922, *Inclusive, the Same Being the One-fifth of Actual Values, Save and Except the Year* 1921 *Which is Actual Value.*

1911	$54,806,914.00	
1912	55,050,286.00	
1913	55,829,328.00	
1914	55,945,074.00	
1915	55,945,067.00	
1916	55,833,234.00	
1917	56,855,453.00	
1918	56,827,782.00	
1919	56,831,076.00	
1920	60,851,333.00	8 per cent inc.
1921	307,695,100.00	actual value.
1922	315,629,880.00	" "

496 **Exhibit "C" to Osborne's Affidavit,**

Being Memoranda of the Assessed or One-fifth Total Value of All Property as Shown by the Grand Assessment-roll of the State of Nebraska from 1911 *to* 1921, *Inclusive, Save and Except for the Year* 1921, *Which is the Full and Actual Value, or Five Times That of Other Years.*

Grand Total-.

1911	$415,670,075	
1912	463,371,889	
1913	470,690,414	
1914	471,940,195	
1915	481,931,238	
1916	500,827,274	
1917	528,891,424	
1918	467,947,914	
1919	568,921,570	(Pencil notation in right hand margin).
1920	762,284,909	34% Increase.
1921	3,305,477,292	13% Decrease.
1922	3,191,705,290	3% Decrease.

497 "Mr. Dressler: I object to the testimony of Mr. Osborne for the reason that he did not have authority to speak for the entire membership of the board, and it was the action of the board that was complained against.

Mr. Lamaster: The only reason this affidavit was made in regard to this was because there were some statements made in the record that had not been disputed to the effect that he had made some representations to the taxing authorities over the state as to the way they should assess the railways.

Mr. Root: The Burlington objects to this for the reason that the proceedings of the commission in connection with the proof of the value of the property before the board should be controlling, rather than Mr. Osborne's affidavit as to the intention of members of the board. We object to it as incompetent.

Judge Lewis: I don't think it is necessary to have a ruling on this."

Defendants' Exhibit No. 33.

Defendants offered in evidence defendants' Exhibit 33, being an affidavit of W. H. Osborne, state tax commissioner, as follows:

"W. H. Osborne, being first duly sworn, on oath deposes and says that in connection with the study of the affidavit of A. W. Scribner, filed in this case, affiant secured from Mr. Scribner the original cards showing the conveyances for Nance County and Merrick County, total figures for which are given in Mr. Scribner's affidavit.

There were twenty-five transfers in Nance County as shown by

the cards, 16 of which transfers were in 1921 and 9 in 1922. Th total consideration of the 16 conveyances in 1921 was $414,806, an the total assessed value for 1921 on the same tracts was $183,97 giving a percentage of assessed value to the actual value of 44.5% The total consideration for the 9 conveyances in 1922 was $164,69 and the total assessed value for 1922 was, on the same tracts of lan $85,249, making a ratio of assessed value to actual value of 51.1%.

Affiant says that there were thirty-four transfers in Merrick Coun as shown by the cards, 29 of which transfers were in 1921 and 5 which were in 1922. The total consideration of the 29 conveyanc in 1921 was $519,105, and the total assessed value for 1921 on th same tracts was $230,825, giving a percentage of assessed value the actual value of 44.5%. On the five conveyances in 1922 th total consideration was $52,200, while the total assessed value of th same tracts was $32,750, or a percentage of 62.7%.

Affiant further says that he selected these two counties for consi eration for the reason that Mr. Scribner stated that the relation assessed value to sale value in the fifty-three counties, records which were compiled by him, was 46.5%. His compilation show Merrick County to have a ratio of 46% and Nance County to hav a ratio of 47% or an average of 46.5% or the same ratio as all th counties under his showing. Analysis by years shows the fallac of counting 1921 and 1922 together, prices of land having continu to decline."

498 **Defendants' Exhibit No. 40.**

Defendants offered in evidence defendants' Exhibit 40, bein pages 237, 238 and 239 of Volume 58 of the reports of the Inte state Commerce Commission in Docket Ex Parte 74, as follows:

(Interstate Commerce Commission Report, Vol. 58, Page 237.

The Revenue Needs of Carriers in Western Group.

The western carriers ack that their rates be fixed on a basis th will pernit them to earn a net railway operating income of $5 833,024, which represents a return of 6 per cent on the book es of $8,963,883,753. The extent to which the rates of transportati now in effect fall short of yielding the return sought by these ca riers is indicated by the following comparison:

Net railway operating incomes as sought by the carriers		$537,883,0
Standard return		401,215,8
Actual net railway operating income year ended October 31, 1919	$293,212,870	
Less corporate income charges net debit	28,027,616	
		265,185,2
Adjusted net railway operating income year ended October 31, 1919		226,831,6
Finally adjusted net railway operating income year ended October 31, 1919		184,939,7

The figure $226,831,658 represents the actual income, as adjusted in conformity with the questionnaire. The figure $184,939,759 reflects adjustments subsequent to the questionnaire.

It will be observed that on the basis of the predictions of the carriers, the net railway operating income for this district will
499 be approximately $350,000,000 lower than the annual sum to which they claim to be entitled. They estimated that a general increase of approximately 24 per cent in freight revenue was required to return the amount claimed.

During the six years ended 1917 the railway operating income of the carriers averaged $386,000,000 annually; during the four years ended 1915 it averaged $347,000,000 annually; during the years 1916 and 1917 it averaged $464,000,000 annually; in 1918 it dropped to $330,320,330; and in 1919 it declined further to $302,857,219. During the six years ended 1917 the operating ratio ranged from 62.69 to 67.68; in 1918 it rose to 78.14, in 1919, to 80.96, and for the first four months of 1920 to 86.06.

The reports of the class I carriers of this district to us for the first four months of 1920 show a net railway operating income of $56,104,721. Deducting the railway mail pay applicable to prior years, stated by the carriers to have been taken into account in these months, in amount $27,790,388, leaves $28,314,333 as the actual result of operations. Adding to this figure $1,209,969 to cover net railway operating income of carriers other than class I, produces $29,524,302.

During the period 1914 to 1919 the net railway operating income
500 of the first four months in each year averaged 23.29 per cent of the aggregate for the year. Equating the actual results of the first four months of 1920 on this basis produces an estimated net railway operating income of $126,768,149, the net railway operating income of an assumed period of twelve months, on the basis of operating costs which prevailed during the first four months of 1920. Subtracting from this figure $3,789,728, which is the estimate of the carriers for increased allowances to private car owners, and $21,254,298, their estimate of increased fuel costs for the year, reduces it to $101,724,123.

The amount of freight and other transportation revenue, excluding passenger, mail and express reported to us by class I carriers for the first four months of 1920, aggregated $498,001,006. To this amount $16,462,794 has been added to cover revenues of carriers other than class I carriers, resulting in a gross estimated revenue of $514,463,800. During the years 1915 to 1919 inclusive, freight and other transportation revenue, excludng passenger, mail and express, for the first four months of each year, averaged 28.52 per cent of the aggregate for the year. Equating the actual revenues of the first four months of 1920 upon this basis produces $1,803,870,266, as the estimated revenues of an assumed period of twelve months based on the operations of the first four months of 1920.

501 The number of ton-miles of revenue freight for Class I carriers in the western group during the past eight years is indicated below:

Year.	Revenue ton-mile
1912	82,888,199,10
1913	96,986,976,2
1914	92,284,883,7
1915	90,945,571,8
1916 (June 30)	112,156,323,3
1916 (Dec. 31)	123,250,722,1
1917	138,044,743,3
1918	142,335,128,4
1918	130,606,713,8

The carriers estimate that the wage award made by the Labor Board under date of July 20, 1920, will add approximately $240,840,000 annually to the operating expenses of the carriers in the western group. This is equivalent to 11.2 per cent of the total railway operating revenue of the western carriers, as finally adjusted by them for the constructive year.

Plaintiff's Rebuttal Testimony.

Plaintiff offers in evidence

Being page 633 of the Seventh Annual report of the Nebraska State Railway Commission, which is as follows:

Physical Valuation of Steam Railroads.

July 1, 1913.

Chicago & Northwestern Railway Company's property.

Miles of Roadway, 1,071.28. Miles of Track, 1,266.48.

Department's Valuation.

	Reproduction cost new.	Present value.	Formula No. 2, present value.
1. Right-of-way and Station Grounds:			
(*a*) Mkt. val. with acquirement	$2,572,244	$2,572,244	.....
(*b*) Including Acq. and severence	4,620,727	4,620,727	.....
2. Real Estate	44,916	44,916	.....
3. Grading	6,314,595	6,314,595	.....
5. Bridges, Trestles and culverts	3,118,017	2,225,195	.....
6. Ties	3,381,529	2,039,623	.....
7. Rails	4,161,176	2,812,670	.....
8. Frogs and Switches	128,878	67,053	.....
9. Track Fastenings and other mat'l	870,291	580,157	.....
10. Ballast	1,441,389	1,087,923	.....
11. Track Laying and Surfacing	1,122,686	1,122,686	739,941
12. Roadway Tools	29,223	17,833	.....
13. Fencing-right-of-way	353,000	203,837	.....
14. Crossings & Signs	210,711	140,870	.....
15. Interlocking & other Sig. Apprts	44,160	36,418	.....
16. Telegraph & Telephone lines	181,967	113,253	.....
17. Station Bldgs. and Fixtures	1,186,188	858,817	.....

Chicago & Northwestern Railway Co.'s Property.—Continued.

		Reproduction cost new.	Present value.	Formula No. 2, present value.
503	18. General Office bldgs. and fixtures	17,359	12,073	.....
	19. Shops, Engine houses and turntables	445,390	344,256	.....
	20. Shop Machinery & Tools	40,968	27,513	.....
	21. Water Stations	337,595	229,755	.....
	22. Fuel Stations	238,768	170,052	.....
	24. Storage Warehouses	4,027	3,887	.....
	30. Miscellaneous structures	497,668	317,699	.....
	31. Adaptation and solidification	1,143,798	1,143,798	828,103
	33. Steam Locomotives	1,673,469	1,104,490	.....
	35. Passenger Cars	816,455	489,873	.....
	36. Freight cars	3,351,357	2,278,923	.....
	37. Work and Miscellaneous Equipment	274,372	245,927	.....
	38. Rent and Repairs of Equipment	74,884	74,884	56,934
	39. Inspection and Purchase of Equipment	61,157	61,157	41,192
	40. Transportation Men and material miscellaneous	313,720	313,720	238,521
	41. Stores and supplies for Neb	527,600	527,600	.....
	42. General Expenditures—Contingencies:			
	(*a*) Mkt. val. land only	4,182,546	4,182,546	3,269,153
	(*b*) Inc. Acq. and severance right of way	4,430,413	4,430,413	3,517,424
	(*a*) Grand Totals, Mkt. val. land only	$40,129,942	$32,734,081	$31,185,093
504	(*b*) Inc. Acw. and Sev. Right of Way	$42,426,292	$35,030,431	$33,481,847
	(*a*) Per mile of roadway	37,460	30,566	29,110
	(*b*) Per mile of roadway	39,510	32,700	31,254
	(*a*) Per track Mile	31,686	25,847	24,623
	(*b*) Per track Mile	33,499	27,660	26,437

Plaintiff Offered in evidence page 639 of the Seventh Annual Report of the Nebraska State Railway Commission which was as follows:

Physical Valuation of Steam Railroads.

July 1, 1913.

Chicago, St. Paul, Minneapolis & Omaha Railway Company's Property.

Miles of Roadway, 306,105. Miles of Track, 370.15.

Department's Valuation.

		Reproduction cost new.	Present value.	Formula No. 2, present value.
1.	Right of Way and Real estate:			
	(*a*) Mkt. Value with acquirement	$1,256,893	$1,256,893	.....
	(*b*) Including Acquirement and sev.	2,144,444	2,144,444	.....
3.	Grading	1,565,662	1,565,662	.....
5.	Bridges, Trestles and culverts	780,422	780,422	.....
6.	Ties	965,229	550,181	.....
7.	Rails	1,249,734	899,808	.....
8.	Frogs and Switches	46,014	23,927	.....
9.	Track Fastenings & other materials	225,725	153,493	.....
10.	Ballast	259,114	220,247	.....
11.	Track laying and surfacing	317,625	317,625	213,635
505 12.	Roadway Tools	10,624	6,374	.....
13.	Fencing Right of Way	124,385	97,020	.....
14.	Crossings & Signs	33,825	19,280	.....
15.	Interlocking & other Sig. Apprts	3,582	2,687	.....
16.	Telegraph & Telephone lines	32,057	15,387	.....
17.	Station Bldgs. and Fixtures	243,900	165,852	.....
19.	Shops, Engine Houses and Turntables	118,973	107,076	.....
20.	Shop Machinery & Tools	7,475	4,485	.....

Physical Valuation of Steam Railroads.—Continued.

	Reproduction cost new.	Present value.	Formula No. 2, present value.
21. Water Stations	61,352	44,787	.....
22. Fuel Stations	20,475	13,514	.....
30. Miscellaneous structures	62,241	43,569	.....
31. Adaptation and solidification	298,162	298,162	.....
32. Engineering and Superintendence	257,267	257,267	220,730
33. Steam Locomotives	511,268	301,648	.....
35. Passenger Cars	197,675	124,535	.....
36. Freight cars	720,803	454,106	.....
37. Work and Miscellaneous Equipment	76,322	39,767	.....
38. Rent and Repairs of Equipment	31,088	31,088	23,729
39. Inspection and Purchase of Equipment	15,061	15,061	9,021
40. Transportation of Men and material miscellaneaus	128,200	128,200	97,855
41. Stores and supplies	144,681	144,681	.....
42. General Expenditures—Contingencies:			
(*a*) Mkt. Value Land only	1,089,874	1,089,874	859,935
(*b*) Inc. Acq. and Sev. Right of Way	1,192,830	1,192,830	963,103
(*a*) Grand Totals, Mkt. Value Land only	$10,855,708	8,922,943	8,508,913
(*b*) Inc. Acq. and Sev. Right of Way	11,846,215	9,913,450	9,499,632
(*a*) Per Mile of Roadway	35,463	29,149	27,797
(*b*) Per Mile of Roadway	38,699	32,385	31,033
(*a*) Per Track Mile	29,328	24,106	22,988
(*b*) Per Track Mile	32,004	26,782	26,664

506 In the argument of counsel the following colloquy occurred:

"Judge Lewis: Do I understand you to state that the M. & O. is taxed disproportionately.

Mr. Lamaster: The M. & O. is taxed disproportionately. I figured in the other case that it was probably taxed at—that is, there was a difference of about fifteen per cent more as to the M. & O. as compared to the Northwestern. That is, assuming that the Northwestern was taxed at 75 per cent of its value, the M. & O. was taxed at about 90 per cent. Of course, that was only an estimate but it was somewhere in that neighborhood.

Judge Munger: You would say that if the Northwestern was taxed at what it should be that the M. & O. was overtaxed 15 per cent?

Mr. Lamaster: Well, it was in that neighborhood. The State Board took that into consideration this year and reduced the M. & O. 9.53 per cent as against 1921, so that the difference is not so much now, but still even yet as compared with the Northwestern the M. & O. is still paying a slightly larger proportion of taxes, I should say. The Northwestern figures, of course, show, as we contend, that their value is at least 75 per cent."

The following also occurred during the argument:

"Judge Lewis: Well, now, you might give us briefly your notions on the facts, Mr. Lamaster. Now what you claim about the facts in the railroad case is that farm lands were assessed at 61 to 75 per cent?

Mr. Lamaster: We think if due consideration were given to all of the facts and I can take up the bill of exceptions, that contains a large list of transfers, that transfers as recorded even now are filled with transactions and affected by transactions of years ago, it would bring up the assessment to 75 per cent.

507 The foregoing contains copies of all of the Exhibits and all of the evidence material to any of the issues involved herein. Wymert Dressler, Attorney for Plaintiff. O. S. Spillman, Atty. Gen. of Nebraska; Hugh La Master, Asst. Atty.Gen., Attorneys for Defendants. Feb. 3, 1923.

Order Settling Statement of Evidence.

The foregoing statement of the evidence in the case of Chicago & Northwestern Railway Company, plaintiff, vs. W. H. Osborne, Jr., Tax Commissioner of the State of Nebraska, et al., defendants, is hereby approved. J. W. Woodrough, District Judge. Robt. E. Lewis, Circuit Judge. Dated at Omaha, Nebr., this day of Feb. 8th, 1923.

Endorsed: Filed Feb. 6, 1923. R. C. Hoyt, Clerk.

508 **Clerk's Certificate.**

UNITED STATES OF AMERICA,
District of Nebraska, ss:

I, R. C. Hoyt, Clerk of the District Court of the United States within and for the District of Nebraska, hereby certify that pursuant to the order of the Court and in compliance with the Præcipe, a copy of which is found on page 53 hereof, the foregoing record has been made, and that the same is a true and faithful transcript of the pleadings and proceedings on file and of record in said Court, in the case of Chicago & North Western Railway Company, vs. W. H. Osborne, Jr. et al., No. 492 Equity. That a copy of the Citation duly certified has been lodged and remains in my office as such clerk.

Witness my hand and the seal of said Court at Omaha, in said District this 14th day of February, A. D. 1923. R. C. Hoyt, Clerk. [Seal of the United States District Court, District of Nebraska, Omaha Division.]

Endorsed on cover: File No. 29,413. Nebraska D. C. U. S. Term No. 863. Chicago and Northwestern Railway Company, appellant, vs. W. H. Osborne, Jr., as State Tax Commissioner of the State of Nebraska et al. Filed February 20th, 1923. File No. 29,413.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923

No. 225

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY, APPELLANT,

vs.

W. H. OSBORNE, JR., AS STATE TAX COMMISSIONER OF THE STATE OF NEBRASKA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED FEBRUARY 20, 1923.

(29,414)

(29,414)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 864.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY, APPELLANT,

vs.

W. H. OSBORNE, JR., AS STATE TAX COMMISSIONER OF THE STATE OF NEBRASKA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

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1 Be it remembered, that on the 24th day of November, 1922, a Petition was filed in the Clerk's office of said District Court, which said Petition is in words and figures following, to-wit:

493 Equity.

1922 Tax Suit.

IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA, OMAHA DIVISION.

CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY, Plaintiff,

vs.

W. H. OSBORNE, Jr., as State Tax Commissioner of the State of Nebraska; Fred E. Erickson, as County Treasurer of Burt County, Nebraska; F. O. Robinson, as County Treasurer of Cedar County, Nebraska; Henry Schwinek, as County Treasurer of Cuming County, Nebraska; Walter E. Miller, as County Treasurer of Dakota County, Nebraska; O. A. Butler, as County Treasurer of Dixon County, Nebraska; Edward Matthews, as County Treasurer of Knox County, Nebraska; P. W. Ruth, as County Treasurer of Madison County, Nebraska; A. L. Brande, as County Treasurer of Pierce County, Nebraska; Robert Gratton, as County Treasurer of Stanton County, Nebraska; G. G. Griffin, as County Treasurer of Thurston County, Nebraska; R. G. Allen, as County Treasurer of Washington County, Nebraska; W. O. Hanssen, as County Treasurer of Wayne County, Nebraska, and their successors in office, Defendants.

Petition in Equity.

[Filed Nov. 24, 1922.]

To the Honorable Judge of the District Court of the United States, in and for the District of Nebraska:

Comes now the plaintiff, and for cause of action alleges:

2 I.

That the plaintiff is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, having its principal office and place of business at the City of Hudson, in said State of Wisconsin, and is a citizen and resident of said State of Wisconsin, and owns and operates lines of railroad in the States of Iowa, Wisconsin, Michigan, South Dakota, Nebraska, and other States, and is engaged in interstate commerce.

II.

That the defendant, W. H. Osborne, Jr., is the duly appointed, qualified and acting Tax Commissioner of the State of Nebraska, and is a citizen and resident of said State of Nebraska; that Fred E. Erickson is the duly elected, qualified and acting County Treasurer of Burt County, Nebraska, and is a citizen and resident of the State of Nebraska; F. O. Robinson is the duly elected, qualified and acting County Treasurer of Cedar County, Nebraska, and is a citizen and resident of the State of Nebraska; that Henry Schwinck is the duly elected, qualified and acting County Treasurer of Cuming County, Nebraska, and is a citizen and resident of the State of Nebraska; that Walter E. Miller is the duly elected, qualified and acting County Treasurer of Dakota County, Nebraska, and is a citizen and resident of the State of Nebraska; that O. A. Butler is the duly elected, qualified and acting County Clerk and County Treasurer of Dixon County, Nebraska, and is a citizen and resident of the State of Nebraska; that Edward Matthews is the duly elected, qualified and acting County Treasurer of Knox County, Nebraska, and is a citizen and resident of the State of Nebraska; that P. W. Ruth is the duly elected, qualified and acting County Treasurer of Madison County, Nebraska, and is a citizen and resident of the State of Nebraska; that A. L. Brande is the duly elected, qualified
3 and acting County Treasurer of Pierce County, Nebraska, and is a citizen and resident of the State of Nebraska; that Robert Gratton is the duly elected, qualified and acting County Treasurer of Stanton County, Nebraska, and is a citizen and resident of the State of Nebraska; that G. G. Griffin is the duly elected, qualified and acting County Treasurer of Thurston County, Nebraska and is a citizen and resident of the State of Nebraska; that R. G. Allen is the duly elected, qualified and acting County Treasurer of Washington County, Nebraska, and is a citizen and resident of the State of Nebraska; that W. O. Hanssen is the duly elected, qualified and acting County Treasurer of Wayne County, Nebraska, and is a citizen and resident of the State of Nebraska; and each and all of the defendants are agents of the State of Nebraska in the performance of the respective duties of their office.

III.

That this is a suit of a civil nature in equity involving an amount exclusive of interest and costs, exceeding the sum or value of Three Thousand and no/100 Dollars ($3,000.00), as to each defendant, and is a controversy wholly between the plaintiff, a citizen and resident of the State of Wisconsin, and the defendants, each and all of whom are citizens and residents of the State of Nebraska.

IV.

That the claims and causes of action involved in this suit arise under and involve the construction and application of the Fourteenth

Amendment to the Constitution of the United States, providing that no person shall be deprived by any state of its property without just compensation nor denied the equal protection of the law, and plaintiff alleges that it claims protection of said Amendment to the Constitution of the United States against the unlawful acts of the defendants hereinafter set forth.

V.

Plaintiff further states to the Court that this is a suit in equity to enjoin the collection of illegal taxes against the plaintiff; that said taxes are illegal because the property of the plaintiff has been valued for taxing purposes at more than its true value, while the property of all other tax-payers in the state, and particularly real estate, has systematically and intentionally and continuously been valued at only a fraction of its true value, thereby resulting in a discrimination against the plaintiff and depriving the plaintiff of equal protection of the law in violation of the Constitution of the State of Nebraska and the laws of the State, and in violation of the Fourteenth Amendment to the Constitution of the United States.

VI.

Plaintiff further alleges that it is provided by Section 1, Article 8, of the Constitution of Nebraska:

"The necessary revenue of the State and its governmental subdivisions shall be raised by taxation in such manner as the legislature may direct; but taxes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises, and taxes uniform as to class may be levied by valuation upon all other property. Taxes, other than property taxes, may be authorized by law. Existing revenue laws shall continue in effect until changed by the legislature."

It is further provided by Section 4, Article 8, of the Constitution of Nebraska:

"The legislature shall have no power to relieve or discharge any county, city, township, town or district whatever, or the inhabitants thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, or due any municipal corporation, nor shall commutation for such taxes be authorized in any form whatever."

It is provided by Section 28 of Article 4 of the Constitution of Nebraska:

"A Tax Commissioner shall be appointed by the Governor with the advice and consent of the Senate. He shall have jurisdiction over the administration of the revenue laws of the State, and together with the Governor, Secretary of State, State Auditor and State Treasurer, shall have power to review and equalize assessment of

property for taxation within the State. He shall have such other powers and perform such other duties as the legislature may provide. His term of office and compensation shall be as provided by law."

It is provided by Section 5820, Compiled Statutes of Nebraska, 1922:

"Actual valuation. All property in this state, not expressly exempt therefrom, shall be subject to taxation, and shall be valued and assessed at its actual value. 'Actual value,' as used in this act, shall mean its value in the market in the ordinary course of trade."

Section 5822, same Statute, provides:

"Real property taxes—first lien. Taxes on all real property shall be a first lien thereon from and including the first day of December of the year in which they are levied until the same are paid, except general city taxes on real property within the corporate limits of cities of the metropolitan class, which shall be a first lien thereon from and including the first day of May following the levy, until the same are paid."

Section 5823, same Statute, provides:

"Personal property taxes—first lien. Taxes assessed upon personal property shall be a first lien upon the personal property of the person to whom assessed from and after the first day of November of the year in which they are assessed, until paid."

6 Section 5825, same Statute, provides:

"Taxes—first lien. All general taxes due the state and its governmental subdivisions shall be a first lien on the real estate on which levied, and takes priority over all other encumbrances and liens thereon."

Sections 5827 to 5832 prescribe the duties of the Tax Commissioner and require him, in cases of illegal or unfair assessment by county assessors or counties, to cause the property to be re-assessed—

"To the end that all property in such district or county shall be assessed equitably as compared with like property in such district, county or state."

Section 5839, same Statute, provides:

"Railroad assessment. The state board of equalization and assessment is hereby empowered, and it is made its duty, to assess all property of the railroads and railroad corporations in the State of Nebraska; Provided, however, that all machine repair shops, general office buildings, store houses, and also all real and personal property outside of right-of-way and depot grounds, as of and belonging to any such railroad and telegraph companies, shall be listed for pur-

poses of taxation by the principal officers or agents of such companies with the assessors of any precinct of the county where such real or personal property may be situated, in the manner provided by law for the listing and valuation of real and personal property."

Section 5840, same Statute, provides:

"Railroad assessment—time of. The board on the first Monday of May of each year shall proceed to ascertain all property of any railroad company owning, operating or controlling any railroad or railroad service in this state, which for the purpose of assessment and taxation, shall be held to include the main track, spur
7 tracks, warehouse tracks, roadbed, and super-structures thereon, and all machinery, rolling-stock, telegraph lines and instruments connected therewith, all material on hand and supplied, provided for operating and carrying on the business of such road, in whole or in part, together with franchises and all other property of such railroad company used or held for the purpose of operating its road, and appraise and assess the same as personal property as herein provided."

Sections 5841 to 5846, same Statute, prescribe the kind of reports to be made to the State Board of Equalization by Railway Companies, and plaintiff alleges that it made such report in accordance with law.

Section 5847, same Statute, provides:

"Board returns to county clerk—trackage. The state board of equalization and assessment, after having valued and assessed all the railroad property in this state in accordance with the provisions of this article, shall immediately make return to the county clerk of each and every county in which any portion of the railroad property as designated in this article may be located, to be used as the basis of levy for the county and governmental subdivisions through which any railroad or part thereof may extend."

Sections 5859 to 5874 provide the method of equalization by the various county boards of equalization and as to the work of said county boards of equalization it is provided by Sections 5875 and 5876 that the State Board of Equalization shall review the work of the county boards of equalization, and as to railroad companies and the values of their property fixed by the county boards of equalization so far as the same lies within cities and villages:

"The board shall equalize and so fix the values of the various properties returned that the companies assessed shall stand, as
8 near as may be, upon a basis of equality with other taxpayers in the same cities and villages respectively."

Section 5880, same Statute, provides:

"Proceedings regular and valid. The proceedings of the assessors and of the board, and the action of each of them in determining the

assessable value of the property of the companies under the provisions of this article, shall be presumed to be regular and valid, and the determination of the assessors and of the board shall not be impaired, vitiated or set aside upon any grounds not affecting the substantial justice of the tax. The provisions of this article prescribing a date or period at or within which any act shall be performed or determination shall be made by the board, as well as all other acts looking to the orderly conduct of the business of any of the officers herein provided for, shall be deemed directory only. No tax assessed or levied under the provisions of this article shall be held to be invalid, in whole or in part, on account of being assessed in the wrong name, or on account of the manner of listing, assessing, apportioning or valuing any property of any company, or on account of the method or manner of ascertaining and determining the assessable value of the property of any company by any assessor or the board, unless such company shall show that gross injustice has resulted therefrom."

Section 5881, same Statute, provides:

"Suit to set aside assessment—method of procedure. In any action, suit, or proceeding brought by such company, or by any creditor, stockholder or bondholder thereof, to set aside, restrain or postpone the payment or collection of any tax levied upon the property of any company under the provisions of this article, no injunction, order or writ to enjoin or restrain the payment or collection of the tax shall issue or be continued in force, unless such company shall pay to the city or village whose taxes are affected thereby, the amount of taxes which the court shall determine primarily to be justly and equitably due from such company. Such primary
9 determination shall be made by the court in which the action, suit or proceeding is pending, upon motion summarily and without delay. In case the amount of tax justly and equitably due from the company shall be finally determined to be less than the amount so paid, the excess shall be refunded to such company by direction of the court."

VII.

Plaintiff further alleges that in accordance with said Statutes of Nebraska plaintiff made report to the State Board of Equalization and to the county assessors of the various counties strictly in accordance with law; that thereupon during the month of April, 1922, the State Board of Equalization and Assessment fixed the valuation of plaintiff's property in Nebraska for taxing purposes; said order being in words and figures following, to-wit:

"Resolved, that we, the State Board of Equalization and Assessment, in regular session held for the purpose of valuing and assessing the railroads in the State of Nebraska for the purpose of taxation of their property in the said state, and having given due and full consideration to the returns furnished said Board by the several

railroad companies, and having taken into consideration the main track, side track, spur track, warehouse tracks, roadbed, right of way and depot grounds, and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand and supplies, moneys, credits, franchises and all other property of said railroad companies, and having taken into consideration the gross and net earnings of said railroads, the total amount expended in operation and maintenance, the dividends paid, the capital stock of each system or road and the market value thereof, and the total amount of secured and unsecured indebtedness and from all the information which we are able to obtain, do hereby ascertain, appraise, fix and assess for the purposes of general taxation the
10 full actual value of the property of each of the several systems or companies in the State of Nebraska, as hereinafter recited.

Chicago, St. Paul, Minneapolis and Omaha Railway Company, $12,392,905.00.

That said State Board of Equalization and Assessment fixed the valuation per mile of plaintiff's line of railroad in Nebraska on the basis of 303 miles at $40,900.00; that thereafter the plaintiff, pursuant to said Statutes of Nebraska, appeared before the State Board of Equalization at its meeting on the third Monday in July, 1922, complaining that said valuation fixed by the State Board of Equalization was excessive and asking to have same reduced to the true value of said property of the plaintiff and that the valuation to be certified by said Board of Equalization to the various county clerks be made to conform to the percentage of actual value which is enjoyed by real estate throughout the State of Nebraska for taxing purposes and which plaintiff alleges is on the average only about 60 per cent of true value, but plaintiff alleges that the State Board of Equalization denied to plaintiff relief in the premises and certified to the various county clerks, the valuation of plaintiff's property as fixed by the said State Board of Equalization and the valuation per mile of plaintiff's property as so fixed, and the said county clerks and county treasurers, defendants herein, are applying said valuation per mile to the levies provided by law for raising revenue, and said county treasurers will force plaintiff to pay taxes on said grossly excessive and unlawful valuation unless restrained by order of this court.

VIII.

Plaintiff further alleges that the value of plaintiff's property in the State of Nebraska does not exceed $8,501,948.00 and that
11 the value per mile of plaintiff's property does not exceed $27,569.00 per mile, and that the valuation for plaintiff's property, as fixed by said State Board of Equalization, is excessive by at least $3,890,957.00; that the valuation per mile, as fixed by said State Board of Equalization, is excessive by at least $12,000.00 per mile.

IX.

Plaintiff further alleges that the State Board of Equalization and the several county assessors of the State of Nebraska have for more than two years assessed and valued farm land in the State of Nebraska at much less than the true value thereof; that during the year 1920 farm lands in the State of Nebraska, which constitute more than 90 per cent of the value of all property in the state, except railroads, was fixed for taxing purposes by the State Board of Equalization and by the county assessors at only 68 per cent of the true value of such farm land; but plaintiff alleges that for the year 1921 the valuation of farm lands in the State of Nebraska, as returned by the county assessors of the several counties, and as adjusted and equalized by the State Board of Equalization, was fixed at only about 47 per cent of the true value of said farm land; and for the year 1922 at only about 60 per cent of the true value of said farm lands; and in that behalf plaintiff alleges that the fixing of the valuation of farm lands for taxing purposes at only about 60 per cent of the true value thereof by the State Board of Equalization was the result of a systematic, intentional, notorious and continuous under-valuation of said farm lands by the several county assessors and the State Board of Equalization for taxing purposes; that said intentional and systematic under-valuation of farm lands was done for the purpose of relieving the said farm lands of their just share of the taxing burden in the state; and in that behalf plaintiff alleges that

12 the said defendant, Osborne, as Secretary of the State Board of Equalization for the year 1920, published a statement showing the result of the valuation by the county assessors as equalized by the State Board of Equalization with respect to farm lands as follows:

"The abstracts of assessment have been received covering lands and improvements for all the counties except Arthur. The returns show that the precinct assessors and other local assessing officials throughout the state have placed a value on lands and improvements which average over 68 per cent of the average value as established by the ratio process based on actual sales. It would seem only fair and just that the State Board would accept this average valuation established by almost 2,000 precinct assessors and in equalizing the land and improvements between counties, maintain, as nearly as possible, for each county, an assessed actual valuation of 68 per cent of the actual value as established by the ratio process."

And plaintiff alleges and charges that for the year 1920 the valuation of farm lands for taxing purposes in Nebraska was equalized and fixed by the State Board of Equalization at only 68 per cent of the true value thereof in violation of the Constitution and Laws of the State of Nebraska, as above set forth.

Plaintiff further alleges and charges that the adoption of said valuation of 68 per cent for the year 1920, on real estate was intentional and deliberate and pursuant to concerted action by the

State Board of Equalization and the several county assessors and in that behalf alleges and charges that the said State Board of Equalization made and published a statement of the result of its action as a Board of Equalization for the year 1920 as follows, to wit:

"In the matter of equalization between counties, the State Board has adhered to the early announced plan of accepting for
13 valuation purposes the average value placed on lands and improvements by the precinct and county assessing officials. For equalization between counties, the value returned by the assessing officials of each county has been compared with the average real value, as established by the ratio process, based on bona fide sales from July 1, 1918, to July 1, 1919. The equalization of the counties on the basis of the sale average was requested by the Board at the meeting of the assessing officials of the counties held July 20, 1920. The ratio process, used in correcting the sale averages, is the plan used by Wisconsin for a number of years, and Minnesota and other states have adopted the same plan.

"Under this plan of equalization, the State Board has the combined judgment as to value, of the assessing officials of the counties and of the buyers and sellers of real estate for a year's period. The year taken was previous to the land boom and does not cover the period of the highest prices.

"The valuations as returned by the County Boards averaged 68 per cent of the real value, as determined by the ratio process, and the State Board adopted this 68 per cent as the basis for equalization purposes."

Plaintiff further alleges and charges that the State Board of Equalization and the County Assessors of the several counties, pursuant to said purpose and plan to undervalue all farm lands in the state for taxing purposes for the year 1921 met in convention at the City of Lincoln on the 18th day of March, 1921, and adopted a resolution in words and figures following, to wit:

"Resolution adopted at State Assessors' Meeting, March 18, 1921.

"At a meeting of the county assessors, held at Lincoln, Nebraska, on March 18, 1921, the following resolution, introduced by Harry W. Scott, of Pawnee City, was adopted:

14 "'Whereas, there has been an expression representing the sentiment of sixty-four counties and the result of such expression seems to average 15 per cent reductions under 1920 real estate values.

"'Therefore, be it resolved, that it be the sense of this meeting that the aggregate return of the value of real estate in each county be returned to the State Board at not to exceed a 15 per cent reduction.

"'It being understood that this shall in no way be binding upon any county, but merely suggests a uniformity of action.

"'Dated this 19th day of March, 1921. (Signed) G. L. Mumford, Secretary-Treasurer.'"

Plaintiff further alleges and charges that the defendant, Osborne, as Tax Commissioner, provided each and every county assessor in the State of Nebraska with a copy of said resolution and stated to said assessor in writing as follows:

"The above and foregoing is a verbatim copy of a resolution adopted by the County Assessors of the State, at their meeting, held in the City of Lincoln, on March 18, 1921, and it is requested by the department that you read the resolution over carefully, so that the result of their labors will be in accordance with the thought of the conference. We very much desire to avoid the necessity of being compelled to again equalize to any great extent by counties this year, feeling as we do, that we have a very good equalization over the state at this time, but where the occasion demands, the State Board will not shirk its duty to fairly and equitably raise or lower any county, to the end that each bears its just relation, one to the other."

Plaintiff further alleges and charges that the said several county assessors, pursuant to said express purpose, returned the valuation of real property in their respective counties at only about 47 per cent of the true value thereof, and that the State Board of Equalization upon receiving said returns from the said several counties equalized the valuations on real property so that the average valuation does not exceed 47 per cent of the true value of real property in the State of Nebraska for the year 1921, and for the year 1922, at only about 60 per cent of the true value of said farm lands; that said concerted action by the said county assessors and the State Board of Equalization to return a valuation for taxing purposes on real property of only about 60 per cent of the true value thereof was in violation of the Constitution and Laws of the State of Nebraska and in violation of the duties of said officials and in violation of the rights of the plaintiff, whose property has been fixed by said Board of Equalization at more than the true full actual value thereof.

X.

Plaintiff further alleges and charges that the said action of the said Board of Equalization and the several county assessors in under-valuing farm lands for the purposes of taxation pursuant to said intentional concerted and pre-arranged plan while at the same time valuing the property of the plaintiff at 100 per cent and more of the true value thereof for taxing purposes, constitutes an unlawful discrimination against the plaintiff and compels the plaintiff to bear more than its just proportion of the burden of taxation within the state in violation of the Constitution and Laws of the State of Nebraska, as above set forth; that the action of the State Board of Equalization and the several county authorities in intentionally and systematically under-valuing farm lands, which constitute about 75 per cent of the taxable property of the state, while requiring the plaintiff to pay taxes upon the full actual value and more of its property, constitutes an unjust and unlawful discrimination against the

plaintiff and denies plaintiff equal protection of the law guaranteed by the Constitution of Nebraska and the laws of Nebraska, and guaranteed by the Fourteenth Amendment of the Constitution of the United States, and deprives plaintiff of its property without due process of law, in violation of the Fourteenth Amendment to the constitution of the United States.

XI.

Plaintiff further alleges that the intentional and systematic under-valuation by the State Board of Equalization and the several county assessors of farm lands within the State of Nebraska, being about 76 per cent of the total taxable property in said state, at only 68 per cent of the true value thereof, for taxing purposes, while valuing the property of the plaintiff at 100 per cent or more of its true value, and requiring plaintiff to pay taxes on said true value or more constitutes and is an unlawful burden upon interstate commerce, in that more than 90 per cent of the commerce carried by plaintiff over the lines of its railroad in the state of Nebraska is interstate in character; that all taxes which plaintiff is required to pay in the State of Nebraska are chargeable to expenses of operation, and that for the defendants and the State of Nebraska, by said unlawful and intentional discrimination in valuation between plaintiff and other taxpayers in the state, to impose an undue and unlawful expense upon the handling of interstate commerce, constitutes and is an unlawful discrimination against interstate commerce, and an unlawful burden thereon in violation of the Constitution of the United States.

XII.

Plaintiff further alleges that it is entitled to the equal protection of the laws of the State of Nebraska; that said laws of the State of Nebraska make it the duty of the State Board of Equalization and the several county assessors to fix valuations of all property in the state at true, full, actual value; that the said State Board of Equalization has full power to correct any inequality of valuations which may be returned by the several county assessors, and it was the duty of said State Board of Equalization so to do, but plaintiff alleges that the said State Board of Equalization, in violation of the Constitution and Laws of the State of Nebraska, not only refused to change said valuation so as to put plaintiff upon a basis of equality with other taxpayers, as required by law, but the said State Board of Equalization intentionally co-operated with the said county assessors for the purpose of returning the value of farm property at only 60 per cent of the true value thereof for taxing purposes for the year 1922, while requiring the plaintiff to pay taxes upon full actual value and more of its property within the state; that said action of the taxing authorities mentioned denies to plaintiff equal protection of the law, guaranteed by the Fourteenth Amendment to the Constitution of the United States. But plaintiff alleges that it

has no remedy at law in the premises; that heretofore the Supreme Court of the State of Nebraska, by repeated decisions, has held that a taxpayer whose property is assessed at 100 per cent or more of its true value, while the property of other taxpayers is valued at only a fraction of true value, has no remedy save and except to use its best endeavors to have the taxing officials raise the valuations of the property of other taxpayers. And in that behalf plaintiff alleges that it appeared before the State Board of Equalization at the time provided by law and requested and petitioned the State Board of Equalization to either fix the valuation of plaintiff's property on the same percentage of true value as enjoyed by all other taxpayers in the state, by the alternative action by said State Board of Equalization of reducing the value of plaintiff's property to the basis of the others or by raising the valuation of all other property in
18 the state to full 100 per cent actual value thereof, but plaintiff alleges that the said State Board of Equalization denied said petition and has refused to the plaintiff any relief in the premises. And plaintiff alleges that the said State Board of Equalization not only denied plaintiff any relief whatever, but certified to the several county clerks the valuation of plaintiff's property at more than 100 per cent of the full true value thereof and certified the valuation of the farm land in the several counties at only an average of about 60 per cent of the true value thereof, for the year 1922.

XIII.

Plaintiff further alleges that the county clerks of the several counties mentioned, have received said discriminatory valuations certified to them by the State Board of Equalization and have spread upon the tax list the valuation of plaintiff's property at the amount fixed by the State Board of Equalization, which is more than 100 per cent of the true value thereof, and said county clerks have spread upon the tax list the valuations of farm lands in their respective counties at only about 60 per cent average of the true value thereof; and plaintiff alleges and charges that the several defendants, who are county treasurers of the counties mentioned, have, since the first day of November, 1922, called upon the plaintiff to pay taxes in the several counties based upon said unlawful and discriminatory valuation of plaintiff's property, as compared with the valuations of other property in the county, and plaintiff alleges that said defendants, and each of them, will proceed to carry out said unlawful purpose and will impose upon and collect from plaintiff said unlawful taxes based upon said unlawful valuation and discriminatory basis unless restrained by order of this court.

XIV.

Plaintiff further alleges that it has always been and now is willing to pay its lawful share of the taxes of the state, and in that
19 behalf plaintiff alleges that it is willing and hereby offers to pay the several county treasurers as soon as said taxes become due and payable to said treasurers all taxes lawfully levied against it

property based upon a valuation not exceeding 50 per cent of the valuations certified to the several county clerks and the county treasurers by the State Board of Equalization for the year 1922, and plaintiff alleges that it will keep said offer good and will pay said taxes when due upon said basis.

XV.

Plaintiff further alleges that it has no adequate remedy at law; that no appeal whatever is provided from the action of the State Board of Equalization, and plaintiff has no remedy at law and no remedy whatever save by decree of this court restraining and enjoining the defendants from carrying out said unlawful plan and imposing and collecting said unlawful taxes against plaintiff.

XVI.

Plaintiff further alleges and charges that said unlawful taxes constitute a lien against plaintiff's property and a cloud upon plaintiff's title to said property, that the lien of said taxes against plaintiff's property will unlawfully burden plaintiff in its ability to finance its business as a common carrier of interstate commerce, and cripple, injure, and impair the plaintiff in the operation of its line of railroad as a common carrier of interstate commerce. And plaintiff further alleges that the defendant county treasurers, and each of them, will issue numerous distress warrants against the plaintiff and against its property and will cause to be instituted large numbers of suits against the plaintiff for the collection of said unlawful and discriminatory taxes unless restrained from so doing by order of this court.

Wherefore, as plaintiff is without remedy at and by the rules of the common law, plaintiff prays:

1. That subpœnaes in equity forthwith issue for the defendants, and each of them, requiring them to answer to the petition of the plaintiff herein, but not under oath, said oath being hereby expressly waived.

2. Plaintiff further prays the Court to enter an order prescribing the percentage of actual value of plaintiff's property upon which plaintiff shall tender taxes to the several county treasurers, defendants herein, for the year 1922, pending the final determination of this suit.

3. Plaintiff further prays the Court to issue its order of temporary injunction against the defendants, and each of them, upon due notice as required by law, restraining and enjoining the defendants, and each of them, from carrying out their said purpose to impose upon the plaintiff said unlawful and discriminatory valuations of its property for taxing purposes, and to restrain and enjoin the defendants, and each of them, from collecting any taxes against the plaintiff upon a valuation greater than that to be fixed by the Court, in accordance with the prayer of this petition, and that pending such hearing the defendants be restrained from collecting said unlawful taxes.

4. Plaintiff further prays the Court that upon final hearing the Court will issue its order of injunction forever restraining and enjoining the defendants, and each of them, from collecting from the plaintiff or against its property taxes in excess of the just and fair valuation of plaintiff's property and in proportion to the valuation of the property of other taxpayers, as found and fixed by order of this court, and plaintiff further prays the Court for a decree declaring null and void the valuation of plaintiff's property as fixed by
21 the said State Board of Equalization, and as now same appears upon the records of the defendants herein, and discharging plaintiff's property from the pretended lien of said unlawful valuation; and plaintiff prays for such other and further relief in the premises as justice and equity may require. Chicago, St. Paul, Minneapolis and Omaha Railway Company, By Wymer Dressler, Robert D. Neely, Paul S. Topping, Its Attorneys.

STATE OF NEBRASKA,
County of Douglas, ss:

I, Wymer Dressler, being first duly sworn on oath, depose and say that I am the attorney for the Chicago, St. Paul, Minneapolis and Omaha Railway Company, a corporation; that I have read the foregoing Petition in Equity and know the contents thereof, and that the statements and allegations therein contained are true; that my information is based upon a personal inspection of the records of the State Board of Equalization and personal knowledge of the action taken by said Board with respect to railroad assessments. Wymer Dressler.

Subscribed and sworn to before me this 24th day of November, 1922. Ruth Levey, Notary Public in and for Douglas County, Nebraska. (Seal.)

[File endorsement omitted.]

22 Afterwards, to-wit: On the 15th day of December, 1922, a Motion to Dismiss, was filed in said cause, which is in words and figures following, to-wit:

In the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Motion to Dismiss.

[Filed Dec. 15, 1922.]

Comes now W. H. Osborne Jr., defendant above named, and moves the court to dismiss the above entitled suit for the following reasons:

1. The plaintiff had a plain, adequate and complete remedy at law for its protection against all of the alleged illegal acts charged in the petition by means of an error proceeding from the State

Board of Equalization and Assessment to the Supreme Court of the State of Nebraska.

2. This suit does not involve as much as $3,000 as to each defendant.

3. There is insufficiency of fact alleged in the petition to constitute a valid cause of action in equity against the defendants, or any of them. Clarence A. Davis, Attorney General of Nebraska, by Hugh LaMaster, Asst. Atty. Genl. of Nebraska, Attorneys for Moving Defendants.

[File endorsement omitted.]

23 Afterwards, to-wit: On the 21st day of December, 1922, an Order of Court was filed in said cause, which is in words and figures following, to-wit:

In the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Order Granting Leave to File Supplemental Bill.

Now on this 21st day of December, 1922, upon application of the Plaintiff in open Court leave is hereby granted to the Plaintiff to file a supplemental bill making parties defendants the county treasurers of the several counties involved in this suit who shall take office in January, 1923 as successors to those county treasurers who are now defendants in said suit. By the Court: J. W. Woodrough, Judge.

[File endorsement omitted.]

Subpœna and Service.

[Filed Dec. 28, 1922.]

24 Chancery Subpœna. Original. Case No. 493. Equity.

United States District Court, District of Nebraska, Omaha Division.

The President of the United States to W. H. Osborne, Jr., as State Tax Commissioner of the State of Nebraska; Fred E. Erickson, as County Treasurer of Burt County, Nebraska; F. O. Robinson, as County Treasurer of Cedar County, Nebraska; Henry Schwinek, as County Treasurer of Cuming County, Nebraska; Walter E. Miller, as County Treasurer of Dakota County, Nebraska; O. A. Butler, as County Treasurer of Dixon County, Nebraska; Edward Matthews, as County Treasurer of Knox County, Nebraska; P. W. Ruth, as County Treasurer of Madison County,

Nebraska; A. L. Brande, as County Treasurer of Pierce County, Nebraska; G. G. Griffin, as County Treasurer of Thurston County, Nebraska; R. G. Allen, as County Treasurer of Washington County, Nebraska; W. O. Hanssen, as County Treasurer of Wayne County, Nebraska, and their successors in office, Greeting:

You are hereby commanded to be and appear at the office of the Clerk of the District Court of the United States for the District of Nebraska, on or before the twentieth day after service of this writ at the City of Omaha, then and there to answer the bill of complaint of Chicago, St. Paul, Minneapolis and Omaha Railway Company this day filed against you, hence fail not.

Witness, The Honorable, the Judges of the District Court of the United States for the District of Nebraska, this 24th day of November, 1922. Issued at my office in the City of Omaha under the Seal of said District Court, the day and year last aforesaid. R. C. Hoyt, Clerk. John Nicholson, Deputy. [Seal.]

Memorandum.—The above-named defendants to file their answer or other defense in this suit in the Clerk's office aforesaid, on or before the twentieth day after service excluding the day thereof, otherwise the bill may be taken pro confesso. R. C. Hoyt, Clerk, by John Nicholson, Deputy.

(This writ is returnable within twenty days from date of issue.

[File endorsement omitted.]

Marshal's Costs.

Service	$26.40
Mileage	.....
Expense (in lieu of mileage)	46.00
Total	$72.40

25 Attached to said Chancery Subpœna are the following returns of the United States Marshal:

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 2nd day of December, 1922, I received this Chancery subpœna, and on the 9th day of December, 1922, I served the same upon the within-named G. G. Griffin, County Treasurer of Thurston County, at Pender, in Thurston County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. G. Gammon, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 2nd day of December, 1922, I received this Chancery Subpœna, and on the 6th day of

ember, 1922, I served the same upon the within-named Edward Matthews, County Treasurer of Knox County, Nebraska, at Center, in Knox County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. G. Gannon, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 2nd day of December, 1922, I received this Chancery Subpœna, and on the 5th day of December, 1922, I served the same upon the within-named A. L. Brande, County Treasurer of Pierce County, Nebraska, at Pierce, in Pierce County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. G. Gannon, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 2nd day of December, 1922, I received this Chancery Subpœna, and on the 4th day of December, 1922, I served the same upon the within-named O. A. Butler, County Treasurer of Dixon County, at Ponca, in Dixon County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. G. Gannon, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 2nd day of December, 1922, I received this Chancery Subpœna, and on the 4th day of December, 1922, I served the same upon the within-named Walter E. Miller, County Treasurer of Dakota County, at Dakota City, in Dakota County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. G. Gannon, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st day of December, 1922, I received this Chancery Subpœna, and on the 7th day of December, 1922, I served the same upon the within-named Fred E. Erickson, as Treasurer of Burt County, Nebraska, at Tekamah, in Burt County, State, and District of Nebraska, by delivering and leaving with Fred E. Erickson a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. A. Davis, Deputy United States Marshal.

DISTRICT OF NEBRASKA, ss:

I hereby certify and return, that on the 1st day of Decem 1922, I received this Chancery Subpœna, and on the 7th day of D cember, 1922, I served the same upon the within-named R. G. A len, as Treasurer of Washington County, Nebraska, at Blair, in W ington County, State, and District of Nebraska, by delivering leaving with R. G. Allen a certified copy thereof, with all the dorsements thereon. D. H. Cronin, United States Marshal for District of Nebraska, By J. A. Davis, Deputy United States Mar

DISTRICT OF NEBRASKA, ss:

I hereby certify and return, that on the 1st day of Decem 1922, I received this Chancery Subpœna, and on the 4th day of D cember, 1922, I served the same upon the within-named He Schwinek, as County Treasurer of Cuming County, at West Po in Cuming County, State, and District of Nebraska, by delive and leaving with him a certified copy thereof, with all the ind ments thereon. D. H. Cronin, United States Marshal for the D trict of Nebraska, By Lee A. Weekes, Deputy United States Mar

DISTRICT OF NEBRASKA, ss:

I hereby certify and return, that on the 24th day of Nov. I received this Chancery Subpœna, and on the 29th day of N 1922, I served the same upon the within-named M. L. Endres, C Treasurer of Douglas County, Nebraska, at Omaha, in Dou County, State, and District of Nebraska, by delivering and le with M. L. Endres, a certified copy thereof, with all the indorse thereon. D. H. Cronin, United States Marshal for the Distr Nebraska, By J. A. Davis, Deputy United States Marshal.

27 DISTRICT OF NEBRASKA, ss:

I hereby certify and return, that on the 2nd day of Dece 1922, I received this Chancery Subpœna, and on the 4th day of cember, 1922, I served the same upon the within-named F. O. B son, County Treasurer of Cedar County, at Hartington, in C County, State, and District of Nebraska, by delivering and le with him a certified copy thereof, with all the indorsements th D. H Cronin, United States Marshal for the District of Neb By J. G. Gannon, Deputy United States Marshal.

DISTRICT OF NEBRASKA, ss:

I hereby certify and return, that on the 2nd day of Dece 1922, I received this Chancery Subpœna, and on the 5th day of cember, 1922, I served the same upon the within-named W Hanssen, County Treasurer of Wayne County, at Wayne, in W County, State, and District of Nebraska, by delivering and le with him a certified copy thereof, with all the indorse

...reon. D. H. Cronin, United States Marshal for the District of ...braska, By J. G. Gannon, Deputy United States Marshal.

...STRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st day of December, ...22, I received this Chancery Subpœna, and on the 4th day of De...ber, 1922, I served the same upon the within-named W. H. Os...rne, State Tax Commissioner, at Lincoln, in Lancaster County, ...te, and District of Nebraska, by delivering and leaving with him ...rtified copy thereof, with all the indorsements thereon. D. H. ...nin, United States Marshal for the District of Nebraska, By J. C. ...Clung, Deputy United States Marshal.

...STRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 24th day of November, ...22, I received this Chancery Subpœna, and on the 10th day of De...ber, 1922, I served the same upon the within-named P. W. Ruth, ...unty Treasurer, Madison County, at Madison, in Madison County, ...te, and District of Nebraska, by delivering and leaving with him ...rsonally a certified copy thereof, with all the indorsements ...reon. D. H. Cronin, United States Marshal for the District of ...braska, By Anthony J. Ruddy, Deputy United States Marshal.

Afterwards, to-wit: On the 2nd day of January, 1923, a Supplemental Petition in Equity was filed in said cause, ...ch is in words and figures following, to-wit:

...the District Court of the United States for the District of Nebraska, Omaha Division.

No. 493. Equity.

[Title omitted.]

Supplemental Petition in Equity.

[Filed Jan. 2, 1923.]

...mes now the Plaintiff and shows to the Court that since the trial ...this cause before three judges and since said cause was taken ...der advisement and pending a decision an election has occurred ...reby certain new officers, County Treasurers, have been elected ...d should be made parties to this suit and by leave of Court here...re granted Plaintiff hereby alleges that the following named ...fendants should be made parties to this suit and a subpœna in ...ty served upon each of them, to-wit:

...Martin Nelson as County Treasurer of Cedar County, Nebraska.
...Fred Wackel as County Treasurer of Cuming County, Nebraska.
...Nettie Baker as County Treasurer, Thurston County, Nebraska.

James J. Steele as County Treasurer of Wayne County, Nebraska.
Charles H. Robertson as County Treasurer, Washington County, Nebraska.
Otto J. Bauman, as County Treasurer of Douglas County, Nebraska.

Wherefore, Plaintiff prays the same relief against the above mentioned Defendants as it prayed in its original Petition against the original Defendants, County Treasurers in said respective counties. Chicago, St. Paul, Minneapolis and Omaha Railway Company, By Wymer Dressler, Robert D. Neely, P. S. Topping, Its Attorneys.

29 STATE OF NEBRASKA,
County of Douglas, ss:

Robert D. Neely being duly sworn deposes and says that he is one of the Attorneys for the above named Plaintiff; that he has read the foregoing Supplemental Petition in Equity and knows the contents thereof and that the statements therein contained are true as he verily believes. Robert D. Neely. (Seal.)

Subscribed and sworn to before me this 2nd day of January, 1923. Ruth Levey, Notary Public.

The Clerk will forthwith issue subpœnaes in chancery for each of the above mentioned Defendants and deliver same to the Marshal for service, said service to be completed before January 10th, 1923. Wymer Dressler, Robert D. Neely, P. S. Topping, Attorneys for Plaintiff.

[File endorsement omitted.]

30 Afterwards, to-wit: On the 10th day of January, 1923, an Order of Court was filed in said cause, which is in words and figures following, to-wit:

In the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Order Denying Temporary Injunction.

Now on this 10th day of January, A. D. 1923, this cause having heretofore been taken under advisement by the court on plaintiff's application for a temporary injunction the Court being well advised in the premises, doth find:

That plaintiff for the redress of the wrongs recited in its petition had an adequate remedy at law under the statutes of the State of Nebraska in prosecuting error proceedings to the Supreme Court of the State of Nebraska, and for that reason there is no equity in the application for a temporary injunction.

It is therefore considered by the Court that plaintiff's application for temporary injunction be and hereby is denied.

To all and singular the findings and judgment of the Court plaintiff excepts and its exceptions are hereby allowed. By the Court: Robt. E. Lewis, Circuit Judge. Thos. C. Munger, District Judge. J. W. Woodrough, District Judge.

[File endorsement omitted.]

31 Afterwards, to-wit: On the 10th day of January, 1923, an application for Injunction Pending Appeal, was filed in said cause, which is in words and figures following, to-wit:

In the District Court of the United States for the District of Nebraska.
Omaha Division.

[Title omitted.]

Hon. Robert E. Lewis, Circuit Judge; Hon. Thos. C. Munger, District Judge; Hon. J. W. Woodrough, District Judge, Presiding.

Application for Injunction Pending Appeal.

[Filed Jan. 10, 1923.]

Comes now the Plaintiff on this tenth day of January, 1923, the Court having heretofore on this date entered its order denying the prayer of the Plaintiff for an interlocutory injunction against the Defendants, and shows to the Court that the Plaintiff will immediately appeal and has appealed to the Supreme Court of the United States from the Order of the Court denying Plaintiff's prayer for an interlocutory injunction and Plaintiff further shows to the Court that the whole amount of taxes levied against the Plaintiff and which were withheld by the Plaintiff from payment pending the hearing of Plaintiff's prayer for a temporary injunction were the sum of One hundred forty-nine thousand four hundred twenty-eight & 19/100 Dollars ($149,428.19); that Plaintiff has always desired to pay such portion of said taxes as may be justly and legally due that Defendants and Plaintiff asserts that under the pleadings and evidence adduced before this Honorable Court the Plaintiff does not owe to the Defendants taxes in excess of forty percent (40%) of the amount above specified but Plaintiff says that it desires to do equity in the premises and for that purpose Plaintiff is willing to pay fifty percent (50%) of said taxes pending the outcome of its appeal to the Supreme Court of the United States.

32 Plaintiff further shows to the Court that notwithstanding the Court has entered its Order denying any relief to the Plaintiff on the ground that Plaintiff had an adequate remedy at law by way of error proceedings to the Supreme Court of Nebraska which deprived the Court of jurisdiction to grant Plaintiff any relief in the premises the Plaintiff most respectfully represents to the Court that said decision of the Court was erroneous and Plaintiff

should have the privilege of testing the validity of the Court's Order by appeal to the Supreme Court of the United States and in the meantime be protected against the payment to the Defendants of that portion of said taxes which the Plaintiff claims, and the proof shows Defendants are not lawfully entitled to collect; and Plaintiff further represents and shows to the Court that Justice and equity will be promoted if the Court will make and enter an order enjoining the Defendants, pending the appeal, from collecting from the Plaintiff a greater amount than fifty percent (50%) of said taxes; that if the Court should refuse to grant such an order pending appeal Plaintiff will be compelled, by distress warrants, to pay the whole amount of said taxes to the Defendants and Defendants will disburse the money thus paid and Plaintiff will be without remedy and Plaintiff fears that in such event the question presented by Plaintiff's appeal will become moot in the Supreme Court of the United States and Plaintiff will be without any remedy whatever for the protection of its rights in the premises.

Plaintiff further shows and represents to the Court that Plaintiff is solvent and is able, ready and willing to execute a bond with good and sufficient surety in such sum as the Court may direct fully protecting the Defendants and the public, so that in the event the Supreme Court of the United States should hold that the order of this Court denying Plaintiff's prayer for an interlocutory
33 injunction was properly entered the whole amount of said taxes may be secured to the Defendants and to the public together with interest thereon and the costs of the appeal.

Plaintiff further shows and represents to the Court that the percentage of taxes to be paid to the Defendants pending the appeal are believed by the Plaintiff under the pleadings and the evidence and the law in this case to not exceed forty percent (40%), yet Plaintiff desires to do full equity and if the Court should be of the opinion that a different percentage of taxes should be paid as a condition of an injunction against the collection of the balance pending appeal Plaintiff is willing that the Court shall fix the percentage of taxes above mentioned which shall be paid as a condition of an injunction against the Defendants restraining them from collecting the balance of said taxes pending appeal.

Wherefore, Plaintiff prays that the Court will enter an order prescribing and fixing the percentage of taxes above mentioned which shall be forthwith paid to the Defendants as a condition of an injunction against the Defendants restraining them from collecting the balance of said taxes pending appeal of the Plaintiff to the Supreme Court of the United States. The Plaintiff further prays the Court to enter its order restraining and enjoining the Defendants, their officers, agents, employes and successors in office from collecting or attempting to collect from the Plaintiff the balance of said taxes other than the percentage the Court shall fix to be paid pending Plaintiff's appeal to the Supreme Court of the United States.

Plaintiff further prays the Court to fix and prescribe the amount of bond which Plaintiff shall give as a supersedeas bond to protect the Defendants and the public against loss on account of the Plaintiff

being permitted to withhold such portion of said taxes as the Court shall prescribe until the determination of the appeal of the Plaintiff by the Supreme Court of the United States and for such
34 other relief as justice and equity require in the premises.
Wymer Dressler, R. C. Neely, Paul S. Topping, Attorneys for Plaintiff.

STATE OF NEBRASKA,
County of Douglas, ss:

Wymer Dressler being first duly sworn deposes and says that he is solicitor for the Plaintiff in the above entitled cause; that he personally prepared the Petition in Equity in this cause; that he represented the Plaintiff at the trial of said cause and is familiar with the pleadings and evidence in said cause; that he has read the foregoing application which was prepared by him personally; that he believes said application to be true and that he believes that justice and equity will be promoted by the Court granting the order of injunction and the other things in said application prayed for; that the appeal in this case is taken in good faith and not for the purpose of delay, and will be prosecuted speedily and the cause brought to a final determination with all reasonable dispatch. Wymer Dressler.

Subscribed and sworn to before me this 10th day of January, 1923. Ruth Levy, Notary Public. (Seal.)

[File endorsement omitted.]

35 Afterwards, to-wit: On the 10th day of January, 1923, an Order of Court was filed in said cause, which is in words and figures following, to-wit:

In the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Order Fixing Amount of Taxes to be Paid.

[Filed Jan. 10, 1923.]

Now on this tenth day of January, 1923, the Court having heretofore entered its Order denying to the Plaintiff an interlocutory injunction in this cause on the ground that Plaintiff had an adequate remedy at law by way of error proceedings to the Supreme Court of Nebraska, and the Plaintiff having given notice of its appeal to the Supreme Court of the United States from said Order; and the Plaintiff having presented its application for an order fixing the percentage of taxes to be paid by Plaintiff pending Plaintiff's appeal to the Supreme Court of the United States and prescribing the amount of bond which Plaintiff shall give as the condition for the Court granting an order of injunction restraining and enjoining the Defendants

from collecting the balance of said taxes pending the determination of said appeal; and the Court being of the opinion that the Defendants cannot be harmed and the rights of the Plaintiff will be promoted by having an opportunity to present said appeal to the Supreme Court of the United States.

It is by the court ordered and decreed that the Plaintiff shall pay or offer to pay to the Defendant County Treasurers or their successors in office as their respective interests may appear sixty percent (60%) of the taxes now being withheld by the Plaintiff and that pending the determination of Plaintiff's appeal by the Supreme Court of the United States and until the further order of the Court the
36 Defendants, their officers, agents and successors in office be and they hereby are restrained and enjoined from collecting or attempting to collect from the Plaintiff the balance of said taxes after the payment of said percentage above prescribed, in counties where the total amount of tax levied against plaintiff is over $3,000, exclusive of interest.

It is further ordered that Plaintiff shall execute a bond in favor of the Defendants and the State of Nebraska for the use and benefit of the Defendants and their successors in office in the sum of seventy-five thousand Dollars ($75,000) which bond may be approved by the Hon. J. W. Woodrough, District Judge. Robert E. Lewis, United States Circuit Judge. Thos. C. Munger, United States District Judge. J. W. Woodrough, United States District Judge.

[File endorsement omitted.]

37 Afterwards, to-wit: On the 10th day of January, 1923, an Assignment of Errors was filed in said cause, which is in words and figures following, to-wit:

In the District Court of the United States for the District of Nebraska.
Omaha Division.

[Title omitted.]

Assignment of Errors.

[Filed Jan. 10, 1923.]

Now comes the plaintiff in the above entitled cause and files the following Assignment of Errors upon which it will rely upon its prosecution of the appeal in the above entitled cause from the Order and Decree made by this Honorable Court (three Judges presiding) on the tenth day of January, 1923.

1.

That the United States District Court for the District of Nebraska, Omaha Division, erred in denying plaintiff's application for a temporary injunction in this cause.

2.

That the United States District Court for the District of Nebraska Omaha Division erred in its decision embodied in its order dated January 10, 1923, that plaintiff has an adequate remedy at law as therein recited.

Wherefore, Appellant prays that said Order and Decree be reversed and that said District Court of the United States for the District of Nebraska Omaha Division be ordered and directed to hear and determine said cause upon the merits and to grant to Appellant a temporary injunction as prayed in its Petition.

Dated this tenth day of January, A. D. 1923. Wymer Dressler, R. S. Kennedy, R. N. Van Doren, Attorneys for Appellant.

[File endorsement omitted.]

38 Afterwards, to-wit: On the 10th day of January, 1923, a Petition for Appeal was filed in said cause, which is in words and figures following, to-wit:

In the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Petition for Appeal.

[Filed Jan. 10, 1923.]

To the Honorable District Court of the United States for the District of Nebraska, Omaha Division:

The above named plaintiff feeling aggrieved by the order and decree rendered and entered in the above entitled cause on the tenth day of January, 1923 which Order and Decree was made by the Hon. Robert E. Lewis, Circuit Judge, Hon. Thomas C. Munger, District Judge and Hon. J. W. Woodrough, District Judge, composing said Court, does hereby appeal from said Decree to the Supreme Court of the United States for the reasons set forth in the Assignment of Errors filed herewith and prays that said appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said Decree was based, duly authenticated, be sent to the Supreme Court of the United States sitting at Washington, D. C. under the rules of such Court in such cases made and provided.

And your petitioner further prays that an order relating to the security to be required of it be made.

Dated this 10th day of January, A. D. 1923. Chicago, St. Paul, Minneapolis and Omaha Railway Co., by Wymer Dressler, R. S. Kennedy, R. N. Van Doren, Its Attorneys.

[File endorsement omitted.]

39 Citation—U. S. Supreme Court. 493. Equity (Appeal).

Citation and Service.

[Filed Jan. 17, 1923.]

(No. 493. Equity.)

The United States of America to W. H. Osborne, Jr., as State Tax Commissioner of the State of Nebraska, et al., and to Hugh La Master, Assistant Attorney General of Nebraska, and O. S. Spillman, Attorney General of Nebraska, Attorneys for said Defendants, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington, thirty days from and after the day this Citation bears date, pursuant to an appeal, filed in the Clerk's office of the District Court of the United States for the District of Nebraska, wherein Chicago, St. Paul, Minneapolis and Omaha Railway Company is Appellant, and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Judges of the District Court of the United States for the District of Nebraska, this tenth day of January 1923. J. W. Woodrough, United States District Judge, District of Nebraska.

Return.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that I received this Citation on the 11th day of January, 1923 and on the same day I served the same upon the within named W. H. Osborne, Jr., as State Tax Commissioner of the State of Nebraska, and Hugh La Master, Assistant Attorney General of Nebraska, and O. S. Spillman, Attorney General of Nebraska, by delivering a certified copy to Hugh La Master their attorney of record.

Dated this 11th day of January, 1923. D. H. Cronin, U. S. Marshal, By J. C. McClung, Deputy.

[File endorsement omitted.]

40 Afterwards, to-wit: On the 19th day of January, 1923, an Order Allowing Appeal, was filed in said cause, which is in words and figures following, to-wit:

n the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Order Allowing Appeal.

[Filed Jan. 19, 1923.]

On motion of Wymer Dressler, Esquire, Solicitor and Counsel for omplainant, it is hereby Ordered that an appeal to the Supreme ourt of the United States from the Order and Decree denying a emporary injunction in this cause heretofore filed and entered herein e and the same is hereby allowed and that a certified transcript of ie record and all proceedings, including such statement of the evi- ence as may be allowed and filed, be forthwith transmitted to said upreme Court of the United States.

It is further ordered that the Bond on Appeal be fixed at the sum f Seventy-five Thousand and no/100 Dollars ($75,000.00), to be onditioned upon the payment to the several Defendant County reasurers or their successors in office of the amounts of the taxes hich have been levied for the year 1922 as the Court shall finally djudicate to be due together with legal interest and penalties thereon s provided by law, and of the amounts of such taxes, interest, enalties and damages and costs which shall be ascertained to be ue by this Court, the same to act as a Supersedeas Bond and also s a bond for costs and damages on appeal, as this day authorized y Order of the Court.

Dated this 16 day of January, A. D. 1923. J. W. Woodrough, istrict Judge. Robt. E. Lewis, Circuit Judge. Thos. C. Munger, istrict Judge.

[File endorsement omitted.]

1 In the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Supersedeas Bond.

[Filed Jan. 19, 1923.]

Know all men by these presents: That Chicago St. Paul Minne- olis and Omaha Railway Company, as Principal, and National urety Company, a Corporation of the State of New York, as Surety, re held and firmly bound unto the Defendant, W. H. Osborne, Jr. State Tax Commissioner, and the other Defendants in this case his and their interests may appear in the sum of Seventy-five housand and no/100 Dollars ($75,000.00), for the payment

whereof well and truly to be made to said Defendants and their successors in office, we bind ourselves, jointly and severally, firmly by these presents.

Yet upon the condition, that whereas, on the tenth day of January, 1923, the District Court of the United States for the District of Nebraska, Omaha Division, said Court being then composed of three judges, entered an injunction in the case of Chicago St. Paul Minneapolis and Omaha Railway Company vs. W. H. Osborne, Jr. as State Tax Commissioner, et al. Equity Number 493 restraining and enjoining said County Treasurers, Defendants in said suit, from collecting certain taxes claimed to be due from the Plaintiff to said Defendant Treasurers for the year 1922 in the State of Nebraska pending an appeal to the Supreme Court of the United States from an order of said Court denying a temporary injunction in said case, and Plaintiff having appealed to the Supreme Court of the United States from the order of the District Court denying Plaintiff a temporary injunction in the case.

42 Now therefore, if the Chicago St. Paul Minneapolis and Omaha Railway Company shall prosecute said appeal to effect and shall pay to said Defendant County Treasurers or their successors in office the amounts of taxes which have been levied for the year 1922 as this Court shall finally adjudicate to be due said County Treasurers from said Plaintiff, together with legal interest, damages and penalties thereon as provided by law, to be ascertained by this Court, and shall pay the amounts of such taxes, interest, penalties and damages and costs as may be adjudged against said Railway Company upon said appeal if it fails to make good its appeal, then this obligation to be void, otherwise to remain in full force and effect.

Dated this 16 day of January, A. D., 1923. Chicago, St. Paul, Minneapolis and Omaha Railway Company, Principal, by Wymer Dressler, Robert D. Neely, Paul S. Topping, Its Attorneys. National Surety Company, Surety, by L. M. Mielenz, Resident Vice-President. By W. H. Wheeler, Resident Assistant Secretary. (Seal.)

The foregoing bond and surety thereon are hereby approved this 16 day of January, A. D. 1923. For the court: J. W. Woodrough, District Judge. Robt. E. Lewis, Circuit Judge. Thos. C. Munger, District Judge.

[File endorsement omitted.]

43 Afterwards, to-wit: On the 25th day of January, 1923, a Motion to Dismiss was filed in said cause, which is in words and figures following, to-wit:

In the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Motion to Dismiss.

[Filed Jan. 25, 1923.]

Come now the defendants and move the Court to dismiss the above entitled suit for the following reasons:

1. The plaintiff had a plain, adequate and complete remedy at law for its protection against all of the alleged illegal acts charged in the petition by means of an error proceeding from the State Board of Equalization and Assessment to the Supreme Court of the State of Nebraska, which remedy it failed to pursue.

2. This suit does not involve as much as $3,000, exclusive of interest and costs, as to each defendant.

3. There is insufficiency of fact alleged in the petition to constitute a valid cause of action in equity against the defendants, or against any of them. O. S. Spillman, Attorney General of Nebraska; Hugh La Master, Asst. Atty. Gen'l of Nebraska, Attorneys for Defendants.

[File endorsement omitted.]

44 Afterwards, to-wit: On the 30th day of January, 1923, Notice of Lodgement, was filed in said cause, which is in words and figures following, to-wit:

In the the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Notice of Lodgment.

[Filed Jan. 30, 1923.]

To Hugh Lamaster, Counsel for Defendants:

Take notice that on the 24th day of January, 1923, Plaintiff and Appellant lodged with R. C. Hoyt, Clerk of the United States District Court Omaha, a statement of the evidence in the above entitled cause, a true copy of which is herewith served upon you.

You will be expected, within ten days, to file any additional matter which you desire to be included in said statement otherwise, at the expiration of ten days, Appellant will ask the Hon. J. W. Woodrough, United States District Judge, to sign and settle said statement of the evidence to be made a part of the record.

Dated this 24th day of January, A. D. 1923. Wymer Dressler, R. N. Van Doren, F. N. Sargent, Attorneys for Appellant.

Received a copy of this Notice and a copy of the Statement of the evidence referred to this 24th day of January, A. D. 1923. O. S. Spillman, Atty. Gen.; Hugh La Master, Asst. Atty. Gen., Attorneys for Defendants and Appellees.

[File endorsement omitted.]

45 Afterwards, to-wit: On the 30th day of January, 1923, an Appearance was filed in said cause, which is in words and figures following, to-wit:

In the District Court of the United States for the District of Nebraska, Omaha Division.

[Title omitted.]

Appearance.

[Filed Jan. 30, 1923.]

Comes now Hugh La Master and hereby enters the appearance of all the Defendants in the above entitled cause this 10th day of January 1923. Hugh La Master, Attorney for Defendants.

[File endorsement omitted.]

46 Chancery Subpœna on Suppl. Bill. Original. Case No. 493. Equity.

Subpœna and Service.

[Filed Feb. 6, 1923.]

United States District Court, District of Nebraska, Omaha Division.

The President of the United States to Martin Nelson as County Treasurer of Cedar County, Nebraska; Fred Wackel, as County Treasurer of Cuming County, Nebraska; Nettie Baker, as County Treasurer of Thurston County, Nebraska; James J. Steele, as County Treasurer of Wayne County, Nebraska; Charles H. Robertson, as County Treasurer of Washington County, Nebraska; Otto J. Bauman, as County Treasurer of Douglas County, Nebraska. Greeting:

You are hereby commanded to be and appear at the office of the Clerk of the District Court of the United States for the District of Nebraska, on or before the twentieth day after service of this writ, at the City of Omaha, then and there to answer the Supplemental

bill of complaint of Chicago St. Paul Minneapolis and Omaha Railway Company, this day filed against you, hence fail not.

Witness, The Honorable, the Judges of the District Court of the United States for the District of Nebraska, this 2nd day of January, 1923.

Issued at my office in the City of Omaha, under the Seal of said District Court, the day and year last aforesaid. R. C. Hoyt, Clerk. John Nicholson, Deputy. (Seal.)

Memorandum.—The above-named defendants to file their answer or other defense in this suit in the Clerk's office aforesaid, on or before the twentieth day after service excluding the day thereof, otherwise the bill may be taken pro confesso. R. C. Hoyt, Clerk, By John Nicholson, Deputy.

(This writ is returnable within twenty days from date of issue.)

[File endorsement omitted.]

47 Attached to said Chancery Subpœna are the following returns by the United States Marshal:

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 13th day of January, 1923 I received this Chancery Subpœna, and on the 17th day of January, 1923 I served the same upon the within-named Martin Nelson, County Treasurer of Cedar County, Nebraska, at Hartington, in Cedar County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. G. Gannon, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 12th day of January, 1923 I received this Chancery Subpœna, and on the 16th day of January, 1923 I served the same upon the within-named Fred Wackel, as County Treasurer of Cuming County, Nebraska, at West Point in Cuming County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. A. Davis, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 13th day of January, 1923 I received this Chancery Subpœna, and on the 16th day of January, 1923 I served the same upon the within-named Nettie Baker, County Treasurer of Thurston County, Nebraska, at Pender, in Thurston County, State, and District of Nebraska, by delivering

to and leaving with her a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. G. Gannon, Deputy United States Marshal.

48 DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 13th day of January, 1923, I received this Chancery Subpœna, and on the 17th day of January, 1923, I served the same upon the within-named James J. Steele, County Treasurer of Wayne County, Nebraska, at Wayne, in Wayne County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. G. Gannon, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 8th day of January, 1923, I received this Chancery Subpœna, and on the 9th day of January, 1923, I served the same upon the within-named Charles H. Robertson, as County Treasurer of Washington County, Nebraska, at Blair, in Washington County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. A. Davis, Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 12th day of January, 1923, I received this Chancery Subpœna, and on the 12th day of January, 1923, I served the same upon the within-named Otto J. Bauman, as County Treasurer, Douglas County, Nebraska, in Douglas County, State, and District of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon. D. H. Cronin, United States Marshal for the District of Nebraska, By J. A. Davis, Deputy United States Marshal.

49–422 Afterwards, to-wit: On the 7th day of February, 1923, a Præcipe for Transcript was filed in said cause, which is in words and figures following, to-wit:

In the District Court of the United States within and for the District of Nebraska, Omaha Division.

No. 493. Equity.

[Title omitted.]

Præcipe for Transcript.

[Filed Feb. 7, 1923.]

Please prepare a transcript for appeal to the Supreme Court, and include:

Petition;
Subpœna and return;
Leave to file Supplemental Bill;
Supplemental Bill;
Subpœna and return;
Appearance for all defendants;
Order denying Temporary Injunction;
Motion to Dismiss;
Application for Injunction Pending Appeal;
Order Allowing Injunction Pending Appeal;
Statement of Evidence;
Notice of Lodgment;
Appeal Papers;
Præcipe for Transcript;
Clerk's Certificate.

Dated this 30th day of January, 1923. Wymer Dressler, Attorney for Appellant.

Service accepted, this 31st day of January, 1923. O. S. Spillman, Attorney General; Hugh La Master, Asst. Atty. Gen. of Nebraska, Attorneys for Appellees.

[File endorsement omitted.]

* * * * * * *

The foregoing contains copies of all of the Exhibits and all of the evidence material to any of the issues involved herein.

Dated Feb. 3, 1923. Wymer Dressler, Attorney for Plaintiff. O. S. Spillman, Atty. Gen. of Nebraska; Hugh La Master, Asst. Atty. Gen., Attorneys for Defendants.

Order Settling Statement of Evidence.

[Filed Feb. 7, 1923.]

The foregoing statement of the evidence in the case of Chicago, St. Paul, Minneapolis & Omaha Railway Company, plaintiff, vs. W. H. Osborne, Jr., Tax Commissioner of the State of Nebraska, et al, defendants, is hereby approved. J. W. Woodrough, District Judge. Robt. E. Lewis, Circuit Judge. Dated at Omaha, Neb., this day of Feb. 8th, 1923.

[File endorsement omitted.]

424 **Clerk's Certificate.**

UNITED STATES OF AMERICA,
District of Nebraska, ss:

I, R. C. Hoyt, Clerk of the District Court of the United States, within and for the District of Nebraska, hereby certify that pursuant to the order of Court and in compliance with the Præcipe, a copy of which is found on page 39 hereof, the foregoing record has been made, and that the same is a true and faithful transcript of the pleadings and proceedings on file and of record in said Court, in the case of Chicago, St. Paul, Minneapolis & Omaha Railway Company, vs W. H. Osborne, Jr., et al, No. 493 Equity. That a copy of the Citation duly certified has been lodged and remains in my office as such Clerk.

Witness my hand and the seal of said Court at Omaha, in said District this 15th day of February, A. D. 1923. R. C. Hoyt, Clerk. [Seal of the United States District Court, District of Nebraska. Omaha Division.]

425 & 426 In the Supreme Court of the United States.

864.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY, Appellant,

vs.

W. H. OSBORNE, JR., et al, Appellees.

Stipulation as to Parts of Record to be Printed.

[Filed Feb. 12, 1923.]

It is hereby stipulated and agreed by and between the parties hereto that these two cases involve similar issues and that the "Statement of the Evidence" which constitutes a part of the record in each

case is identical, and that subject to the approval of the court these cases may be heard upon a common record and submitted upon common briefs and argued at one time. The clerk shall cause to be printed a record consisting of all of the record in each case except that only one "Statement of the Evidence" need be printed. Wymer Dressler, Attorney for Appellants. O. S. Spillman, Atty. Gen. of Nebraska; Hugh La Master, Asst. Atty. Gen., Attorneys for Appellees.

427 [File endorsement omitted.]

Endorsed on cover: File No. 29,414. Nebraska D. C. U. S. Term No. 864. Chicago, St. Paul, Minneapolis & Omaha Railway Company, appellant-, vs. W. H. Osborne, Jr., as State tax commissioner of the State of Nebraska, et al. Filed February 20th, 1923. File No. 29,414.

FILED
OCT 12 192
WM. R. STAIN

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1922,

No.

CHICAGO AND NORTH WESTERN RAILWAY COMPANY,
Appellant,
vs.
W. H. OSBORNE, JR., as State Tax Commissioner of the State of Nebraska, et al.,
Appellees.

Docket No. 863. 22
File No. 29413.

CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY,
Appellant,
vs.
W. H. OSBORNE, JR., as State Tax Commissioner of the State of Nebraska, et al.,
Appellees.

Docket No. 864. 2
File No. 29414.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

BRIEF OF APPELLANTS.

R. L. KENNEDY,
WYMER DRESSLER,
R. N. VAN DOREN,
Solicitors for Appellants.

JAMES B. SHEEAN,
F. W. SARGENT,
Of Counsel.

GUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

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(h) On error proceedings from the action of a City Council levying a special assessment for benefits on account of paving, where the board refused to disclose the evidence upon which they proposed to base the assesment, and the only evidence in the bill of exceptions was offered by the Railway Company, "The Board must be considered to have acted as appraisers of the benefit, acting upon information and upon their knowledge of the property, and the fact alone that the record does not set forth the evidence upon which the board acted will not render the assessment erroneous"..... 20

5. Section 5842, Compiled Statutes of Nebraska, 1922, authorizes the Board to seek and act upon any information it may obtain from whatever source, and, the Nebraska Supreme Court, under the rule of C. & N. W. Ry. v. City of Albion (*supra*), would hold that the Board is not obliged to disclose such information nor embody it in a bill of exceptions for review by error proceedings, and there is no way whereby appellant could cause all the facts, which the Board considered, to be embraced in a bill of exceptions for review 21

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7. Where, as in Nebraska, the order of the State Board of Equalization and assessment fixing railroad valuations for taxation is held by the highest court of the State to be a final order, and the statute affords no further procedure for inquiring into the amount of the valuation, the validity of the assessment may be litigated in the Federal District Court of equity, there being the requisite diversity of citizenship and jurisdictional amount involved 22

8. The adequate remedy at law referred to in Section 267 Judicial Code as depriving a Federal Court of equity of jurisdiction must be a remedy which is available in the Federal Court. It is not enough that a remedy at law may exist in the State Court 23

9. Appellant had no adequate remedy at law in this case, even if we concede, for the purposes of argument, that on error proceedings to the State Supreme Court a full showing might have been possible to show the inequality of the assessment, because, under repeated holdings of that court, the only remedy afforded would have been the direction to appellant to apply to the various county assessing authorities in thirty-seven different counties to have the assessment of all other taxpayers raised up to the level of appellant's assessment; but the State Supreme Court could not have reduced the assessment 24

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Equalization and Assessment has never been construed by the Nebraska Supreme Court and the remedy is not therefore plain or understood 32

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(b) The Supreme Court of Nebraska has also held that it will not review the assessment made by the Board, and raise or lower it as equity and good conscience seem to require, but will only inquire whether the Board proceeded in a legal manner..... 39

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5. Section 5842 Compiled Statutes Nebraska, 1922, authorizes the Board to seek and act upon any information it may obtain from whatever source, and, the Nebraska Supreme Court under the rule of C. & N. W. Ry. Co. v. City of Albion, *supra*, would hold that the Board is not obliged to disclose such information nor embody it in a bill of exceptions for review by error proceedings, and there is no way whereby appellant could cause all the facts, which the Board considered, to be embraced in a bill of exceptions for review 46

6. Section 5901 Compiled Statutes of Nebraska for 1922, does not contemplate that railroads shall have any hearing before the Board. No notice to railroads is required. No opportunity to present evidence is provided for. It is only by grace of the Board that railroads would have opportunity to offer evidence of any kind to be preserved by bill of exceptions for error proceedings 50

7. Where, as in Nebraska, the order of the State Board of Equalization and Assessment fixing railroad valuations for taxation, is held by the highest court of the state to be a final order, and the statute affords no further procedure for inquiring into the amount of the valuation the validity of the assessment may be litigated in the Federal District Court of equity, there being the requisite diversity of citizenship and jurisdictional amount involved 56

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9. Appellants had no adequate remedy at law in this case, even if we concede, for the purposes of argument, that on error proceedings to the State Supreme Court a full showing might have been possible to demonstrate the inequality of the assessment; because, under repeated holdings of that court, the only remedy afforded would have been the direction to appellants to apply to the various county assessing authorities in thirty-seven different counties to have the assessment of all other taxpayers raised up to the level of appellants' assessment. But the State Supreme Court would not have reduced the assessment 61

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1922,

No.

CHICAGO AND NORTH WESTERN RAILWAY COMPANY, *Appellant*,
vs.
W. H. OSBORNE, JR., as State Tax Commissioner of the State of Nebraska, et al., *Appellees.*

Docket No. 863.
File No. 29413.

CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY, *Appellant*,
vs.
W. H. OSBORNE, JR., as State Tax Commissioner of the State of Nebraska, et al., *Appellees.*

Docket No. 864.
File No. 29414.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

BRIEF OF APPELLANTS.

STATEMENT OF THE CASE.

This is an appeal from the District Court of the United States for the District of Nebraska, from an order entered by the court, consisting of three judges sitting pursuant to Sec. 266, Judicial Code, denying to

appellants temporary injunction against thirty-seven county treasurers of the counties through which appellants' lines of railroad operate in Nebraska, from collecting a certain percentage of taxes which had been levied against appellants for the year 1922. The injunction was denied upon the ground:

> "That plaintiff for the redress of the wrongs recited in its petition, had an adequate remedy at law, under the statutes of the State of Nebraska, in prosecuting error proceedings to the Supreme Court of the State of Nebraska and for that reason there is no equity in the application for a temporary injunction." (Rec., 27.)

Appeal has been taken direct to this court under Sections 238 and 266 of the Judicial Code.

By stipulation of the parties, duly filed in this court, the two cases are consolidated for hearing upon a common brief and common argument because the legal question involved is identical in each case, namely, whether or not there was an adequate and complete remedy at law to appellant by way of error proceedings to the State Supreme Court so as to deprive the Federal District Court of jurisdiction to pass upon the merits of the case.

For the sake of brevity the Chicago and North Western Railway Company will be hereafter referred to as the North Western Line, and the Chicago, St. Paul, Minneapolis and Omaha Railway Company will be hereafter referred to as the Omaha Line. References to pages of the record will be to the record in the C. & N. W. case, except where otherwise indicated.

The question presented by these appeals arose in the following manner:

Under the statutes of Nebraska property generally, other than railroad property, is assessed by the county

assessor and that assessment is equalized, in the first instance, by the county board of equalization; while railroad property, other than property of a purely local nature, is assessed by the State Board of Equalization and Assessment by first finding the total value of the property of the railroad company in the state and then dividing that total value by the number of miles of railroad in the state, thus arriving at a mileage valuation for taxing purposes; and this valuation per mile is then certified to the various taxing units, such as counties, school districts, etc., within the state as the basis for the tax levy. This valuation of railroad property is made by the State Board of Equalization and Assessment, on the first Monday of May in each year (Section 5840) and the valuation per mile is promptly certified to the county clerk of each county in which the road runs, as the basis for the tax levy in each taxing district. The statutes provide: (Section 5901) That on the first Monday of July of each year the State Board of Equalization and Assessment shall sit as a Board of Equalization to equalize assessments as between counties. Prior to that time the statute contemplates that the county clerk of each county shall have certified to the state board an abstract of all assessments made within the county, including the assessment which has theretofore been certified to the county clerk by the state board showing the per mileage valuation of the railroads, and it is upon these abstracts received from the various counties, the action of the State Board of Equalization and Assessment as an equalizing board is taken.

In the petitions in equity filed in the District Court it is alleged (Rec., 4):

> "That this is a suit in equity to enjoin the collection of illegal taxes against the plaintiff; that said taxes are illegal because the property of the plaintiff has been valued for taxing purposes at more

than its true value, while the property of all other taxpayers in the state, and particularly real estate, has systematically and intentionally and continuously been valued at only a fraction of its true value, thereby resulting in a discrimination against the plaintiff and depriving the plaintiff of equal protection of the law in violation of the Constitution of the State of Nebraska and the laws of the state, and in violation of the Fourteenth Amendment to the Constitution of the United States."

As to the North Western Line the state board, at its meeting in May, 1922, as an assessing board, fixed the value of the company's property in the state at $38,714,373 and found the mileage to be 1,062.56 miles, thus giving a per mile valuation of $36,475 (Rec., 8); while the railway company alleged in its petition in equity that the value of its property in the state does not exceed $32,100,000 and that the value per mile does not exceed $29,129. (Rec., 46.)

The board fixed the value of the property of the Omaha Line for taxation purposes at $12,392,905 and found the mileage to be 303 miles, making a valuation per mile of $40,900 (Omaha Rec., 7), while the company claimed that its value did not exceed $7,000,000 in the state, and that the value of its line per mile did not exceed $21,691. (Omaha Rec., 47.)

It was alleged in both petitions that the valuation of all other property, and particularly farm property in the state, as fixed by the assessors and as equalized by the state board, did not exceed 60 per cent of the true value thereof.

Appellants appeared before the State Board of Equalization and Assessment at its meeting in July, 1922, and asked that they be placed on a basis of equality with the valuation fixed for other property in each county through which their lines of road operate, that is, that

they be not assessed at a higher percentage of the true value of their property than the percentage enjoyed by other taxpayers in said counties. (Rec., 88.) Considerable evidence was offered before the State Board of Equalization and Assessment to show the discrimination against appellants as compared with other taxpayers (Rec., 89 to 270), but the applications were denied. (Rec., 270.)

Appellants contend that this action of the State Board of Equalization and Assessment finally ended the procedure provided by law for fixing the value of appellants' property for taxing purposes, thus leaving appellants free to litigate the question of the validity of the valuations fixed, and for that purpose appellants resorted to a Federal Court of Equity, there being present diversity of citizenship and the requisite jurisdictional amounts involved as well as the claim of a federal question.

The trial judges in denying the application for a temporary injunction did so upon the assumption and statement that the following statutes afford to appellants a full, complete and adequate remedy at law by way of error proceedings to the Supreme Court of the state.

The statutes relating to the duties and powers of the State Board of Equalization are as follows (Compiled Statutes of Nebraska, 1922):

Section 5898:

> "The Governor, Secretary of State, State Auditor, State Treasurer and Tax Commissioner are hereby constituted the State Board of Equalization and Assessment. The Tax Commissioner shall be Secretary of said board, and as such perform such duties as may devolve on him by law or the rules and regulations of the board. He shall have authority to administer oaths and affirmations and to call

special meetings of the board at such times as its business may require."

Section 5899:

"The Governor shall be ex-officio chairman of such board, and preside at all meetings when present. In the absence of either the president or secretary, their places may be filled temporarily by other members of the board. Three members shall constitute a quorum for the transaction of business."

Section 5900:

"The Board shall have a seal, with which all orders, certificates and process shall be attested. The Board shall provide a uniform method of keeping all books relating to taxation in the several counties of the State."

Section 5901:

"The State Board of Equalization and Assessment shall, on the first Monday of July of each year, meet at the State Capitol for the purpose of equalizing assessments. They shall proceed to examine the abstract of property assessed for taxation in the several counties of the State, including the railroads entirely within such county, and all other property, and shall equalize such assessment so as to make the same conform to law, and for that purpose they shall have the power to increase or decrease the assessed valuation of any county or tax districts, and such increase or decrease shall be made by a percentum, and the per cent of increase or decrease when made shall be certified to the county clerk of the proper county, who shall thereupon add to or deduct from the assessment of each piece or parcel of property in the county affected an amount equal to the per cent of increase or decrease fixed by the State Board. The State Board shall have the power, in equalizing assessments, to increase or decrease the assesed valuation of any class, classes or kinds of property in any county or tax district, whenever in their judgment it shall be necessary to make such assessment conform to law; and such increase or decrease, when made, shall be certified to the county clerk and by the county clerk

extended upon the tax rolls as hereinbefore provided; but in the extension of valuation the county clerk shall reject all such amounts as may fall below $2.50, and all amounts of $2.50 or more shall be extended as the next higher $5.00 or multiple thereof, thus making all valuations end in cipher or five. In the event it shall appear to the State Board of Equalization and Assessment that a just, equitable and legal assessment of the property in the State cannot be made without increasing or decreasing the valuation as returned by any county, the Board of Equalization and Assessment shall issue a notice to the counties which the Board deems either undervalued or overvalued and shall set a date for hearing at least five days following the mailing of such notice. At such hearing legal representatives of the counties may appear and show cause why the valuation or valuations of their counties should not be increased or decreased by the State Board, and after a full hearing, the State Board shall enter its order and certify the same to the County Clerks of the proper counties as hereinbefore set forth in this section. The notice provided for in this section shall be mailed to the county clerk, county assessor, and chairman of the county board. From any final decision of the State Board of Equalization and Assessment, any person, county or municipality affected thereby may prosecute a writ of error to the Supreme Court and upon demand therefor the State Board shall prepare and certify a transcript of its records and proceedings involved in such decision, upon payment by the party demanding the same of a fee of ten cents for each one hundred words. Notice of intention to obtain a review shall be filed within ten days from the date of the entry by the Board, and when docketed, said cause shall be given precedence by the Supreme Court over all civil cases."

It was upon the last two sentences of *Section* 5901 just quoted that the trial court based its conclusion that there was an adequate remedy at law by way of error proceedings to the State Supreme Court. There has never been any decision by the Supreme Court of Nebraska

construing the language of this Section. Appellants contend that this section not only affords no remedy at all but that whatever remedy is contemplated is neither adequate, full nor complete so as to deprive a federal court of equity of jurisdiction to hear the case on its merits.

This conclusion of the trial court was reached after a fairly complete hearing on the merits, and, in order to protect appellants pending the appeal, temporary injunctions were issued requiring the North Western Company to pay 75 per cent of the taxes withheld, which has been done. A bond was given for $150,000 to protect the public in the event the appeal should be unsuccessful. The Omaha Company was required to pay 60 per cent of the taxes, which was done, and a bond was given for $75,000 pending the result of the appeal.

Proof of Overvaluation and Discrimination.

1. *Overvaluation of Appellant's Property.*

Proof of value of the North Western Line property is embodied in the affidavit of C. F. Balch, its Assistant General Auditor. (Rec., 48-57.) Proof of value of the property of the Omaha Line is given in the affidavit of Charles Jensch, its Comptroller. (Rec., 74-84.)

As the method of arriving at the valuation is the same in both affidavits, we will briefly refer to that of Mr. Balch. Attached to this affidavit are seven exhibits, which are explained in the affidavit.

In Exhibit 1 the value of the entire line of the North Western Company is set forth, covering a period of six years ending with 1921, based upon (1) par value of stocks and bonds; (2) market value of stocks and bonds; (3) Nebraska railway operating income capitalized at

six per cent; (4) annual rental paid by the Government during the period of federal control capitalized at six per cent, and (5) the amount allowed by the Interstate Commerce Commission in the proceeding known as *Ex Parte* 74. Upon the bases of these five elements an average valuation was obtained for the entire line of $345,608,727, and a value per mile of road of $42,136.

In Exhibits 2 to 6 the values arrived at in Exhibit 1 are separately apportioned to the State of Nebraska upon six bases, namely, upon the basis of (1) railway operating revenues in Nebraska; (2) miles of line operated in Nebraska; (3) miles of all track operated in Nebraska; (4) transportation train miles in Nebraska; (5) traffic units in Nebraska, being the tons one mile of revenue freight carried and passengers carried one mile, and (6) use of property in Nebraska, being based upon the valuation of locomotives, passenger cars, freight cars, work cars, and all other equipment properly allocated to Nebraska. This method is applied to each of the five bases of value set forth in Exhibit 1.

A sumary of all the preceding exhibits is then set forth in Exhibit 7 by which the average valuations year by year upon the five elements considered in Exhibit 1 are themselves average over such period. The highest average valuation found was in 1916, when it was $35,739,615, and the lowest was in 1920, when it was $28,528,213. The average for the six-year period was $32,088,874, or $29,129 per mile of road operated in Nebraska.

The reasons why the valuation per mile of road in Nebraska is less than the average for the entire line are fully set forth in Mr. Balch's affidavit already referred to, and also in Exhibit 1-a, being another affidavit by Mr. Balch used in the 1921 tax hearing and received in evidence in this case.

Such reasons are set forth in detail by Mr. Balch and show that the company had much more valuable real estate in other states, more miles of double and additional tracks in other states, and larger earning power in other states, and various other reasons amply supporting the reduced valuation per mile in Nebraska.

The State Board of Equalization fixed the North Western Line valuation at $38,714,373, or $36,475 per mile of road in Nebraska.

In the Omaha Line case Mr. Jensch (Rec., 74-84) pursued substantially the same method as that used by Mr. Balch in the North Western Line case, except that Mr. Jensch used five years (1917 to 1921) instead of six years. The recapitulation of the tables prepared and used by Mr. Jensch (Omaha Ex. 7. Opp. Rec., 84) shows an average valuation of the Omaha Company property in Nebraska of $6,689,455, or $21,691 per mile of road in that state.

The State Board of Equalization fixed the Omaha Line valuation at $12,392,906, at the rate of $40,900 per mile of road in Nebraska.

No conflict as to the accuracy of the statistics used by Mr. Balch and Mr. Jensch appears in the record, nor did the defendants challenge the propriety of the method adopted by these experts. Substantially the only evidence offered by appellees was the affidavit and testimony of U. G. Powell, chief accountant of the Nebraska State Railway Commission. (Rec., 276, 279-292.) Mr. Powell submitted two exhibits. (Rec., 281-286.) He took the report made by the North Western Company to the Nebraska State Railway Commission in 1909 of the valuation of its property in Nebraska and added thereto the amounts stated in the subsequent annual reports of that company of additions and betterments to its prop-

erty. He then added five per cent to this total for working capital, materials and supplies, and by this method reached a total of $61,714,310. By the same process of addition he reached a total as to the Omaha Line of $14,480,465.52. (Rec., 284-286.)

Just what these figures represent is not made to appear. Mr. Powell testified (Rec., 288) that he was not to be understood as saying that these figures represented values; that it was merely a tabulation; and that it was difficult to say what the valuation was.

At the conclusion of the trial and in the course of the argument the following colloquy occurred between the court and Mr. Lamaster, counsel for appellees (Rec., 309):

> "Judge Lewis: Do I understand you to state that the M. & O. is taxed disproportionately.
>
> Mr. Lamaster: The M. & O. is taxed disproportionately. I figured in the other case that it was probably taxed at—that is, there was a difference of about fifteen per cent more as to the M. & O. as compared to the North Western. That is, assuming that the North Western was taxed at 75 per cent of its value, the M. & O. was taxed at about 90 per cent. Of course, that was only an estimate but it was somewhere in that neighborhood.
>
> Judge Munger: You would say that if the North Western was taxed at what it should be that the M. & O. was overtaxed 15 per cent?
>
> Mr. Lamaster: Well, it was in that neighborhood. The State Board took that into consideration this year and reduced the M. & O. 9.53 per cent as against 1921, so that the difference is not so much now, but still even yet as compared with the North Western the M. & O. is still paying a slightly larger proportion of taxes, I should say. The North Western figures, of course, show, as we contend, that their value is at least 75 per cent."

2. *Systematic Undervaluation of Other Real Estate.*

A large amount of evidence was offered by the carriers to show the undervaluation of farm lands in Nebraska. This evidence consisted of records of land sales, valuation of Nebraska lands as given in the 1920 U. S. Census Reports, mortgage loans and other records embodied in the affidavit of T. A. Polleys, tax commissioner of the North Western Company. (Rec., 62-73.)

This evidence established that the assessed value of farm lands in Nebraska for 1922 did not exceed sixty per cent of the true value thereof.

As appears from the record, a similar suit to this is pending in the federal court of Nebraska between the same parties, in which the defendants therein (appellees here) filed answer wherein the following admissions were made:

> "Defendants admit that for many years farm lands in the State of Nebraska has been valued for taxation at less than its true value. In the year 1920 farm lands were valued at about 68 per cent of the true value thereof. Defendants deny specifically that for the year 1921 farm lands were assessed at 47 per cent of its true value; deny that real estate generally was assessed at 47 per cent of its true value; and allege that for the year 1921 farm land was assessed at approximately 75 per cent of its true value and that real estate generally was assessed fully as high." (Rec., 72.)
>
> "Defendants admit that while the laws of the State of Nebraska require that all property shall be assessed at its full value they allow that during the entire history of the State it has been the practice of the taxing authorities to value properties of all descriptions, including all railroads, at less than their full value; that in fixing the values of all descriptions of property for taxation it has been the practice of taxing authorities of this state to place them somewhat lower than their fair market value;

that railroads have been undervalued in fully as large proportion to their full value as have other forms of property in proportion to their full valuation." (Rec., 72.)

"That all property, both that of the plaintiff and that of all other taxpayers was assessed at less than its true value and that for the years 1920 and 1921 the property of the plaintiff was not valued to exceed 94 per cent of its true value and that while farm lands were assessed at a slightly lower proportion as compared with plaintiff's property yet in comparison with all other property the property of plaintiff was fairly and honestly valued." (Rec., 73.)

In 1920 the State Board of Equalization in its report of the assessment of lands in Nebraska stated that such assessment was upon a ratio of sixty-eight per cent of real value. (Rec., 181-186.)

In 1921 the county assessors of sixty-four Nebraska counties met and adopted a resolution recommending a reduction of fifteen per cent in the assessed value of lands below the 1920 assessment. (Rec., 186.) This resolution was copied and sent out by the State Tax Commissioner to all county assessors with the request that it be read carefully "so that the result of their labors will be in accordance with the thought of the conference." (Rec., 186.)

In the opening statement of counsel for appellees it was stated:

"that the defendants had investigated land sales in forty counties in Nebraska during the period from July 1, 1921, to July 1, 1922, which showed that

'During the whole year the ratio of the assessed valuation of lands to the sale price was about 60.95 per cent. For the period ending July, 1922, that is during the first six months of the present year, the ratio of the assessed value to the sale price was 65.40 per cent.'

In said opening statement counsel for defendants further stated:

'We have affidavits with reference to values from about 60 persons. They were secured through the offices of the county attorneys of the counties all over the state. They represent about—I have forgotten the exact number—about 20 counties, and they show that the ratio of assessed value to the fair market value is 74.28 per cent, that is, those affidavit figures averaged show about 74.28 per cent.'

Counsel for defendants further stated:

'Now, our contention will be, your Honors, that with this basis of somewhere from 60 to 75 per cent of the actual value being the assessed value—we do not contend of course, that the assessed value is the actual value, that would be an absurdity to make that contention for any class of property, railroads included. There never has been in Nebraska an absolutely cash value of any species of property. With the value put upon the property of over 60 to 75 per cent, and as the year goes on it is an increasingly larger amount owing to the gradual decrease in the value of farm lands, that is as large a proportion, and a larger proportion than the Burlington was assessed; it is as much as the North Western, it is not so large as the M. & O.'

The following colloquy occurred:

'Mr. Dressler: In view of your statement would you be willing to stipulate and save a lot of proof that the ratio of assessment of lands to the true value was somewhere between 60 and 70 per cent?

Mr. Lamaster: No, I should not. I don't think it is 70 per cent. I said from 65 to 75 and a fraction per cent.'" (Rec., 47-48.)

Again, at the conclusion of the trial and during the progress of the argument, the following colloquy occurred:

"Judge Lewis: Well, now, you might give us briefly your notions on the facts, Mr. Lamaster. Now what you claim about the facts in the railroad case is that farm lands were assessed at 61 to 75 per cent?

Mr. Lamaster: We think if due consideration were given to all of the facts and I can take up the bill of exceptions, that contains a large list of transfers, that transfers as recorded even now are filled

with transactions and affected by transactions of years ago, it would bring up the assessment to 75 per cent." (Rec., 309.)

We have not attempted to review all the evidence or to go much into detail as to that to which we have referred. We have presented only so much as we consider sufficient to show the general character of the evidence before the trial court establishing the overvaluation of appellant's property and the systematic and intentional undervaluation of other lands in Nebraska.

Specifications of Error.

I.

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA OMAHA DIVISION ERRED IN DENYING APPELLANT'S APPLICATION FOR A TEMPORARY INJUNCTION IN THIS CAUSE.

II.

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA OMAHA DIVISION ERRED IN ITS DECISION EMBODIED IN ITS ORDER DATED JANUARY 10, 1923, THAT APPELLANT HAD AN ADEQUATE REMEDY AT LAW AS THEREIN RECITED.

BRIEF OF ARGUMENT.

I.

THE UNITED STATES DISTRICT COURT HAD JURISDICTION TO ENJOIN COLLECTION OF THESE TAXES.

1. Because there was the requisite diversity of citizenship and the amount in controversy exceeded $3,000, exclusive of interest and costs. (Sec. 24, Judicial Code.)

2. Because the overvaluation of appellant's property, and the systematic, arbitrary and intentional undervaluation of other property were in violation of the rights guaranteed to appellant under the Fourteenth Amendment to the Constitution of the United States.

Cummings v. *National Bank*, 101 U. S. 153.
Greene v. *L. & I. R. Co.* 244 U. S. 499.
L. & N. R. Co. v. *Greene*, 244 U. S. 522.
Ill. Cent. R. Co. v. *Greene*, 244 U. S. 555.
Raymond v. *Chicago Union Traction Co.* 207 U. S. 20.
Sunday Lake Iron Co. v. *Wakefield Tp.* 247 U. S. 350.
Taylor v. *L. & N. R. Co.* 88 Fed. 350 (C. C. A.).
Taylor v. *L. & N. R. Co.* (certiorari denied), 172 U. S. 647.
L. & N. R. Co. v. *Bosworth*, 209 Fed. 380.
Washington Water Power Co. v. *Kootenai Co.* 270 Fed. 369 (C. C. A.).
A. T. & S. F. R. Co. v. *Sullivan*, 173 Fed. 456 (C. C. A.).
R. & T. Co. v. *Board of Equalization of Tenn.* 85 Fed. 302.

Board of Dir. of Miller Levee Dis. v. *Prairie Pipe Line Co.* (C. C. A. 8th Ct. Aug. 27, 1923). (Not yet reported.)

Sioux City Bridge Co. v. *Dakota Co.* 43 Sup. Ct. Rep. 190.

3. Because appellant would suffer irreparable injury by the levy of numerous distress warrants by the various county treasurers and its employees would be subjected to penalties for failure to pay its taxes.

Compiled Statutes of Nebraska, 1922, Sections 5822, 5823, 5840, 6010 and 6017.

II.

SECTION 5901 COMPILED STATUTES NEBRASKA 1922 PROVIDING FOR ERROR PROCEEDINGS TO THE SUPREME COURT FROM THE ACTION OF THE STATE BOARD OF EQUALIZATION AND ASSESSMENT HAS NEVER BEEN CONSTRUED BY THE NEBRASKA SUPREME COURT AND THE REMEDY IS NOT THEREFORE PLAIN OR UNDERSTOOD.

Atlantic Coast Line Ry. v. *Daughton et al.* (U. S. Sup. Ct.) 67 L. Ed. 681.

Dawson v. *Kentucky Distilleries,* 255 U. S. 288, 296.

Wallace v. *Hines,* 253 U. S. 66, 68.

Shaffer v. *Carter,* 252 U. S. 37, 47.

Union Pacific Ry. Co. v. *Weld County,* 247 U. S. 282.

Davis v. *Wakelee,* 156 U. S. 680, 688.

III.

THE ONLY SUBSTANTIAL EFFECT OF SECTION 5901 IS TO TRANSFER THE RIGHT TO PROCEED BY ERROR PROCEEDING FROM THE STATE DISTRICT COURT TO THE SUPREME COURT.

State ex rel. v. *State Board of Equalization and Assessment,* 81 Neb. 139; 115 N. W. 789.

IV.

THE NEBRASKA SUPREME COURT HAS HELD THAT:

(a) THE SCOPE OF THE REVIEW OF ORDERS FROM THE STATE BOARD OF EQUALIZATION AND ASSESSMENT IS VERY LIMITED.

State v. *Savage,* 65 Neb. 714; 91 N. W. 716.
State v. *State Board of Equalization and Assessment,* 81 Neb. 139, 147; 115 N. W. 789.
State v. *Morehead,* 101 Neb. 43; 161 N. W. 1040.

(b) THE SUPREME COURT WILL NOT REVIEW THE ASSESSMENT MADE BY THE BOARD, AND RAISE OR LOWER IT AS EQUITY AND GOOD CONSCIENCE SEEM TO REQUIRE, BUT WILL ONLY INQUIRE WHETHER THE BOARD PROCEEDED IN A LEGAL MANNER.

State v. *Savage,* 65 Neb. 714; 91 N. W. 716.

(c) THE JURISDICTION OF THE SUPREME COURT IN ERROR PROCEEDINGS EXTENDS ONLY TO THE AFFIRMANCE OR THE REVERSAL, VACATING OR MODIFYING OF A JUDGMENT ACCORDING TO THE RECORD MADE IN THE LOWER TRIBUNAL. ORIGINAL EVIDENCE BY AFFIDAVIT OR OTHERWISE CANNOT BE RECEIVED TO ALTER, CONTRADICT OR AVOID THAT RECORD.

McDonald v. *Bowman,* 40 Neb. 269; 58 N. W. 704.

(d) IT WILL BE PRESUMED PROCEEDINGS OF LOWER TRIBUNAL ARE CORRECT, AND ERROR MUST AFFIRMATIVELY APPEAR ON THE FACE OF THE RECORD.

Bedford v. *Ruby*, 17 Neb. 97, 98; 22 N. W. 76.
Weeks v. *Wheeler*, 41 Neb. 200; 59 N. W. 554.
Parody v. *School District*, 15 Neb. 514; 19 N. W. 633.
Weir v. *B. & M. R. R.* 19 Neb. 212; 26 N. W. 627.
Ashpole v. *Hallgren*, 60 Neb. 196; 82 N. W. 623.
Andrews v. *Kerr*, 54 Neb. 618; 74 N. W. 1071.

(e) WHERE THE EVIDENCE IS NOT PRESERVED AND A TRANSCRIPT OF THE PROCEEDINGS IS NOT PRESENTED, IT WILL BE CONCLUSIVELY PRESUMED IN THE APPELLATE COURT THAT THE FINDINGS OF FACT OF THE LOWER TRIBUNAL ARE TRUE.

Shelby v. *Creighton*, 2 Neb. Unof. 267.
Hoy v. *State*, 69 Neb. 516; 96 N. W. 228.
Lambert v. *Stevens*, 29 Neb. 283; 45 N. W. 557.
Falstrom v. *Banning*, 64 Neb. 339; 89 N. W. 1133.
Aspinwall v. *Sabin*, 22 Neb. 73; 34 N. W. 72.

(f) THE ASSESSMENT AND LEVY AND COLLECTION OF TAXES ARE NOT EQUITABLE PROCEEDINGS. THEY MUST NECESSARILY BE GOVERNED BY RULES WHICH IN MANY RESPECTS MAY BE CONSIDERED ARBITRARY. THE TAXING POWERS AND THE TAXPAYERS MUST COMPLY WITH THESE RULES.

Darr v. *Dawson County*, 93 Neb. 93; 139 N. W. 852.

(g) THE STATE BOARD OE EQUALIZATION AND ASSESSMENT IN VALUING RAILROAD PROPERTY AND EQUALIZING SAME ACT IN A QUASI JUDICIAL CAPACITY, AND THE ORDERS FIXING THE VALUATION IS A FINAL ORDER.

State ex rel. v. *State Board of Equalization and Assessment*, 81 Neb. 139; 115 N. W. 789.
State v. *Savage*, 65 Neb. 714; 91 N. W. 716.

(h) ON ERROR PROCEEDINGS FROM THE ACTION OF A CITY COUNCIL LEVYING A SPECIAL ASSESSMENT FOR BENEFITS ON ACCOUNT OF PAVING, WHERE THE BOARD REFUSED TO DISCLOSE THE EVIDENCE UPON WHICH THEY PROPOSED TO BASE THE ASSESSMENT, AND THE ONLY EVIDENCE IN THE BILL OF EXCEPTIONS WAS OFFERED BY THE RAILWAY COMPANY "THE BOARD MUST BE CONSIDERED TO HAVE ACTED AS APPRAISERS OF THE BENEFIT, ACTING UPON INFORMATION AND UPON THEIR KNOWLEDGE OF THE PROPERTY, AND THE FACT ALONE THAT THE RECORD DOES NOT SET FORTH THE EVIDENCE UPON WHICH THE BOARD ACTED WILL NOT RENDER THE ASSESSMENT ERRONEOUS."

C. & N. W. Ry. Co. v. *City of Albion*, 192 N. W. 233 (Neb.).

V.

SECTION 5842 COMPILED STATUTES NEBRASKA 1922 AUTHORIZES THE BOARD TO SEEK AND ACT UPON ANY INFORMATION IT MAY OBTAIN FROM WHATEVER SOURCE, AND, THE NEBRASKA SUPREME COURT, UNDER THE RULE OF C. & N. W. RY. V. CITY OF ALBION (SUPRA), WOULD HOLD THAT THE BOARD IS NOT OBLIGED TO DISCLOSE SUCH INFORMATION NOR EMBODY IT IN A BILL OF EXCEPTIONS FOR REVIEW BY ERROR PROCEEDINGS, AND THERE IS NO WAY WHEREBY APPELLANT COULD CAUSE ALL THE FACTS, WHICH THE BOARD CONSIDERED, TO BE EMBRACED IN A BILL OF EXCEPTIONS FOR REVIEW.

Section 5842 is as follows:

> "The returns of railroad companies or corporations shall not be held to be conclusive as to the value of the property, but the State Board of Equalization and Assessment shall, from all the information which it is able to obtain, including records of the Railway Commission or other regulatory body, find the true value of all such property, including tangible property and franchises, and shall assess the same on the same basis as other property is hereby required to be assessed. The valuation of each mile shall be determined by dividing the whole value by the number of miles of the main track of each road or line."

See, also:

C. B. & Q. R. R. Co. v. *Babcock*, 204 U. S. 585.

VI.

SECTION 5901 COMPILED STATUTES NEBRASKA 1922 DOES NOT CONTEMPLATE THAT RAILROADS SHALL HAVE ANY HEARING BEFORE THE BOARD. NO NOTICE TO RAILROADS IS REQUIRED, NO OPPORTUNITY TO PRESENT EVIDENCE IS PROVIDED FOR, AND IT IS ONLY BY GRACE OF THE BOARD THAT RAILROADS WOULD HAVE OPPORTUNITY TO OFFER EVIDENCE OF ANY KIND TO BE PRESERVED BY BILL OF EXCEPTIONS FOR ERROR PROCEEDINGS.

(Section 5901 quoted on page 6 of this brief.)

VII.

WHERE, AS IN NEBRASKA, THE ORDER OF THE STATE BOARD OF EQUALIZATION AND ASSESSMENT FIXING RAILROAD VALUATIONS FOR TAXATION IS HELD BY THE HIGHEST COURT OF THE STATE TO BE A FINAL ORDER, AND THE STATUTE AFFORDS NO FURTHER PROCEDURE FOR INQUIRING INTO THE AMOUNT OF THE VALUATION, THE VALIDITY OF THE ASSESSMENT MAY BE LITIGATED IN THE FEDERAL DISTRICT COURT OF EQUITY, THERE BEING THE REQUISITE DIVERSITY OF CITIZENSHIP AND JURISDICTIONAL AMOUNT INVOLVED.

Smyth v. *Ames*, 169 U. S. 466.

Western Union Telegraph Co. v. *Trapp*, 186 Fed. 114 (C. C. A.).

Bacon v. *Rutland R. R. Co.* 232 U. S. 134.

Prentis v. *Atlantic Coast Line Co.* 211 U. S. 210.

City Railway Co. v. *Beard*, 283 Fed. 313.

Prendergast v. *New York Telephone Co.* (U. S. Sup. Ct.), 67 Law Ed. 516.

VIII.

THE ADEQUATE REMEDY AT LAW REFERRED TO IN SECTION 267 JUDICIAL CODE AS DEPRIVING A FEDERAL COURT OF EQUITY OF JURISDICTION, MUST BE A REMEDY WHICH IS AVAILABLE IN THE FEDERAL COURT. IT IS NOT ENOUGH THAT A REMEDY AT LAW MAY EXIST IN THE STATE COURT.

Smyth v. *Ames*, 169 U. S. 466, 516.

St. Louis S. F. R. R. Co. v. *McElvain*, 253 Fed. 123.

Franklin v. *Nevada California Power Co.* 264 Fed. 643 (C. C. A. 9th Ct.).

C. & N. W. Ry. Co. v. *Railroad & Warehouse Commission of Minnesota*, 280 Fed. 387.

Coler v. *Stanley County*, 89 Fed. 257.

United States Iife Insurance Co. v. *Cable*, 98 Fed. 761-765 (C. C. A.).

Scott v. *Neely*, 140 U. S. 106.

Brun v. *Mann*, 151 Fed. 153; 12 L. R. A. n. s. 154 (C. C. A.).

McConihay v. *Wright*, 121 U. S. 201.

National Surety Co. v. *State Bank*, 120 Fed. 593 (C. C. A. 8th Ct.).

IX.

APPELLANT HAD NO ADEQUATE REMEDY AT LAW IN THIS CASE, EVEN IF WE CONCEDE, FOR THE PURPOSES OF ARGUMENT, THAT ON ERROR PROCEEDINGS TO THE STATE SUPREME COURT A FULL SHOWING MIGHT HAVE BEEN POSSIBLE TO SHOW THE INEQUALITY OF THE ASSESSMENT, BECAUSE, UNDER REPEATED HOLDINGS OF THAT COURT, THE ONLY REMEDY AFFORDED WOULD HAVE BEEN THE DIRECTION TO APPELLANT TO APPLY TO THE VARIOUS COUNTY ASSESSING AUTHORITIES IN THIRTY-SEVEN DIFFERENT COUNTIES TO HAVE THE ASSESSMENT OF ALL OTHER PAXPAYERS RAISED UP TO THE LEVEL OF APPELLANT'S ASSESSMENT; BUT THE STATE SUPREME COURT COULD NOT HAVE REDUCED THE ASSESSMENT.

Lincoln Telephone Co. v. *Johnson County*, 102 Neb. 254; 166 N. W. 627.

Sioux City Bridge Co. v. *Dakota County*, 105 Neb. 843; 182 N. W. 485.

X.

THIS COURT HAS CONDEMNED SUCH REMEDY AS NO REMEDY AT ALL.

Sioux City Bridge Co. v. *Dakota County*, 43 Sup. Ct. Rep. 190, and cases there cited.

67 Law Ed. 220.

ARGUMENT.

I.

THE UNITED STATES DISTRICT COURT HAD JURISDICTION TO ENJOIN COLLECTION OF THESE TAXES.

1. The requisites of diversity of citizenship and jurisdictional amount in controversy being present, the jurisdiction of the District Court is clear. (Sec. 24 Judicial Code.)

2. A federal question was clearly presented, in fact, the very gravamen of the action is the illegal actions of appellees resulting in the taking of appellant's property without due process of law and the denial to it of the equal protection of the laws. (14th Amendment, U. S. Const.)

This court is not now concerned with the ultimate question of whether or not an injunction, temporary or permanent, shall be granted. It is, we take it, concerned with the question of whether the bill and the evidence presented an issue giving rise to a federal question, bringing into operation the equity jurisdiction of the District Court.

That such federal question was presented, and that the evidence justified, if it did not require, the exercise of the trial court's equity powers by enjoining the collection of these taxes, results from the allegations of the bill and the evidence as briefly set forth in the statement of the case.

The bill charged that the taxes levied against appellant were illegal because its property had been valued for taxing purposes at more than its true value, while the property of all other taxpayers, and particularly

real estate, had systematically, intentionally and continuously been valued at only a fraction of its true value. (Rec., 4.) This allegation of the bill was abundantly established by the evidence.

As appears from the statement of the case, the value of the North Western Company property did not exceed $32,088,874, or $29,129 per mile, while the assessment made by the State Board of Equalization and certified to the various counties was $38,714,373, or $36,475 per mile, resulting in an assessment approximately twenty per cent in excess of its full value.

Likewise, the evidence disclosed an under-valuation of other lands so general and uniform throughout the state, at about sixty per cent of true values, as to preclude the possibility of honest errors of judgment in the assessing officers. So conclusive was this proof that it led counsel for appellees to concede that farm lands had been assessed at from sixty per cent to seventy-five per cent of their true values. (Rec., 47.) When this proof was supplemented by affirmative evidence that the State Board of Equalization acknowledged by its written report (Rec., 181-186) that the assessments in 1920 were sixty-eight per cent of true values, and in 1921 the assessors by resolution reduced the 1920 assessments by fifteen per cent (Rec., 186) (there being no new assessment of lands in 1922) there was no escape from the conclusion that this systematic under-valuation of farm lands was intentional and deliberate.

Section 1, Article VIII, of the Constitution of Nebraska provides:

> "The necessary revenue of the state and its governmental subdivisions shall be raised by taxation in such manner as the legislature may direct; but taxes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises, and taxes uniform as to class may be

levied by valuation upon all other property. Taxes, other than property taxes, may be authorized by law. Existing revenue laws shall continue in effect until changed by the legislature. (Amended, 1914, 1920.)" (Rec., 4.)

It is further provided by Section 4, Article VIII, of the Constitution of Nebraska:

"The legislature shall have no power to release or discharge any county, city, township, town or district whatever, or the inhabitants thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, or due any municipal corporation, nor shall commutation for such taxes be authorized in any form whatever."

Section 5820, Compiled Statutes of Nebraska, 1922, provides:

"All property in this state, not expressly exempt therefrom, shall be subject to taxation, and shall be valued and assessed at its actual value. 'Actual value,' as used in this act, shall mean its value in the market in the ordinary course of trade." (Rec., 5.)

Such a state of facts brings the case squarely within the rule of the cases heretofore cited under this heading, that equity will enjoin the collection of taxes based upon assessments which are intentionally and systematically discriminatory, where irreparable injury to the complaining taxpayer will result.

This rule is thus stated in *Sunday Lake Iron Co.* v. *Wakefield Tp.* 247 U. S. 350:

"The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other

taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. *Raymond* v. *Chicago Union Traction Company*, 207 U. S. 20, 35, 37."

This rule was most recently applied by this court in the case of *Sioux City Bridge Company* v. *Dakota County*, 43 Sup. Ct. Rep. 190, in which a Nebraska tax was involved, and wherein the same discriminatory system of assessments was presented. The court there said:

"The dilemma presented by a case where one or a few of a class of taxpayers are assessed at 100 per cent of the value of their property in accord with a constitutional or statutory requirement, and the rest of the class are intentionally assessed at a much lower percentage in violation of the law, has been often dealt with by courts and there has been a conflict of view as to what should be done. There is no doubt, however, of the view taken of such cases by the federal courts in the enforcement of the uniformity clauses of state statutes and constitutions and of the equal protection clause of the Fourteenth Amendment. The exact question was considered at length by the Circuit Court of Appeals of the Sixth Circuit in the case of *Taylor* v. *Louisville & N. R. Co.* 88 Fed. 350, 364, 365, 31 C. C. A. 537, and the language of that court was approved and incorporated in the decision of this court in *Greene* v. *Louisville & Interurban R. Co.* 244 U. S. 499, 516, 517, 518, 37 Sup. Ct. 673, 61 L. Ed. 1280. The conclusion in these and other federal authorities is that such a result as that reached by the Supreme Court of Nebraska is to deny the injured taxpayer any remedy at all because it is utterly impossible for him by any judicial proceeding to secure an increase in the assessment of the great mass of under assessed property in the taxing district. This court holds that the right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the require-

ment of statute. The conclusion is based on the principle that where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. In substance and effect the decision of the Nebraska Supreme Court in this case upholds the violation of the Fourteenth Amendment to the injury of the Bridge Company. We must, therefore, reverse its judgment."

We deem it unnecessary to quote from the other cases we have cited. The rule is so well established as to be beyond the field of argument. No controversy with appellees is anticipated upon this feature of the case. Enough has been said to disclose the clear applicability of the rule to the record before us.

3. The bill alleges:

"Plaintiff further alleges and charges that said unlawful taxes constitute a lien against plaintiff's property and a cloud upon plaintiff's title to said property, that the lien of said taxes against plaintiff's property will unlawfully burden plaintiff in its ability to finance its business as a common carrier of interstate commerce, and cripple, injure, and impair the plaintiff in the operation of its line of railroad as a common carrier of interstate commerce. And plaintiff further alleges that the defendant county treasurers, and each of them, will issue numerous distress warrants against the plaintiff and against its property and will cause to be instituted large numbers of suits against the plaintiff for the collection of said unlawful and discriminatory taxes unless restrained from so doing by order of this court."

Section 5822 of the Nebraska Statutes provides:

"Taxes on all real property shall be a first lien thereon from and including the first day of December of the year in which they are levied until the same are paid, except general city taxes on real property within the corporate limits of cities of the metropolitan class, which shall be a first lien there-

on from and including the first day of May following the levy, until the same are paid."

Section 5823 of the Nebraska Statutes provides:

"Taxes assessed upon personal property shall be a first lien upon the personal property of the person to whom assessed from and after the first day of November of the year in which they are assessed, until paid."

Section 5840 of the Nebraska Statutes provides:

"The board on the first Monday of May of each year shall proceed to ascertain all property of any railroad company owning, operating or controlling any railroad or railroad service in this state, which for the purpose of assessment and taxation, shall be held to include the main track, sidetrack, spur tracks, warehouse tracks, roadbed, right of way and depot grounds, and all water and fuel stations, buildings and superstructures thereon, and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand and supplies provided for operating and carrying on the business of such road, in whole or in part, together with franchises and all other property of such railroad company used or held for the purpose of operating its road, and appraise and assess the same as personal property as herein provided."

Section 6010 of the Nebraska Statutes provides:

"The county treasurer is hereby required, during the month of December of each year after the personal taxes for the year have become delinquent, to notify by mail all persons of the amount of their delinquent personal tax, and that unless the same is paid by February first next following, distress warrant will be issued therefor. The treasurer shall, on and after the first day of February next after the personal taxes for the last preceding year have become delinquent, collect the same, together with interest and costs of collection, by distress and sale of personal property belonging to the person against whom levied in the manner provided by law for the levy and sale of personal property on execution. Distress warrants shall be issued against all per-

sons having delinquent personal tax for each year, and each such warrant shall include all delinquent personal taxes of the person against whom issued, unless such person shall, on or before February 1st, file with the treasurer an affidavit that he is unable, by reason of poverty, to pay any such tax, in which case distress warrants shall not issue until ordered by the county board."

Section 6017 of the Nebraska Statutes provides:

"When any corporation doing business in this state shall fail or neglect to pay any tax assessed or charged against it, when the same shall have become delinquent, the county treasurer shall notify any agent or officer of the company in the county where such tax is delinquent that the same is delinquent, and the amount due, and shall further notify the officer or agent to pay over all moneys that may be in his hands, or that may afterwards come into his hands, belonging to such corporation, not exceeding the amount of tax due, to such county treasurer; and if such agent or officer shall fail to pay over the money to the county treasurer, he shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars, nor more than five hundred dollars."

It thus appears that the assessments of appellant's property become first liens upon its property in the various counties in which the same is located. Railroad property under Section 5840 is declared to be personal property and collection of such tax would be made under Section 6010 by the issuance of distress warrants against its property. Appellant's railroad extends into thirty-seven counties in Nebraska and the bill charges, and it is not disputed, that unless enjoined the various county treasurers who are parties defendant in the case would issue distress warrants against its property and would cause to be instituted numerous suits against it for the collection of said taxes.

Under Section 6017, Nebraska Statutes, appellant's

various agents in the thirty-seven counties would be subjected to penalties of from $50 to $500 for failure to comply with the demand of the county treasurers for payment of appellant's taxes in such counties.

Thus is satisfied the rule of equity that injunction will issue to restrain the collection of illegal taxes where irreparable injury will be sustained or where a multiplicity of actions will be maintained.

II.

SECTION 5901 COMPILED STATUTES NEBRASKA, 1922, PROVIDING FOR PROCEEDINGS TO THE SUPREME COURT FROM THE ACTION OF THE STATE BOARD OF EQUALIZATION AND ASSESSMENT HAS NEVER BEEN CONSTRUED BY THE NEBRASKA SUPREME COURT AND THE REMEDY IS NOT THEREFORE PLAIN OR UNDERSTOOD.

This court has many times held that where the remedy at law, which it is claimed deprives a court of equity of jurisdiction, depends upon a state statute which has not been construed or applied by the highest court of the state, it is not such a plain and understood remedy as will deprive an equity court of jurisdiction.

In *Atlantic Coastline Railway* v. *Daughton* (U. S. Ct. Rep.), 67 Law Ed. 681, it is said:

> "The Supreme Court of the United States cannot say that the remedy at law for illegal taxation by a state is plain and adequate, so as to prevent maintenance of a bill to enjoin its enforcement, where the remedy depends on a statute which has not been construed and applied by the highest court of the state."

In *Dawson* v. *Kentucky Distilleries & Warehouse Co.* 255 U. S. 288, this court said:

> "To pay under protest and sue to recover is not such an adequate legal remedy against an illegal

state tax as will prevent the Federal Courts from exercising their equitable jurisdiction to restrain enforcement if the right to recover back is uncertain under the state law when the injunction suit is begun."

In *Wallace* v. *Hines*, 253 U. S. 66, which involved a tax law of North Dakota, this court said:

"As the tax is made a first lien upon all the property of the plaintiff railroads in the state and thus puts a cloud upon their title, and as delay in payment is visited with considerable penalties, there is jurisdiction in equity unless there is an adequate remedy at law against the state, to which the tax is to be paid. The only ground for supposing that there is such a remedy is a provision that, 'An action respecting the title to property, or arising upon contracts may be brought in the District Court against the state the same as against a private person.' This case does not arise upon contract except in the purely artificial sense that some claims for money alleged to have been obtained wrongfully might have been enforced at common law by an action of assumpsit. Nothing could be more remote from an actual contract than the wrongful extortion of money by threats, and we ought not to leave the plaintiff to a speculation upon what the state court might say if an action at law were brought."

In *Union Pacific R. R. Co.* v. *Weld County*, 247 U. S. 282, a statute of Colorado provided that suit to recover taxes illegally collected might be maintained against the Board of County Commissioners, but an amendment to this statute rendered this right rather uncertain.

This Court said:

"Equity has jurisdiction to enjoin the collection of illegally discriminatory taxes, where the existence of an adequate and complete remedy at law is doubtful, where the legal remedy by paying the taxes and suing to recover back necessitates separate actions against several school districts and will not displace the equitable remedy by injunction in one

suit. Section 5750 Colorado Rev. Stat. 1908 provided a plain adequate and complete remedy in cases of illegal taxes by requiring the Board of County Commissioners to refund them when paid and by conferring impliedly on the taxpayer a right to recover them though levied for State, School Districts and Town, as well as for county, purposes by one action against the board. But, in view of later provisions of laws 1913 Chapter B 134 Section 5, the effect of which has not been determined by the State Supreme Court and which might be construed as prohibiting the board from refunding without the approval of the State Tax Commission and as withdrawing the right of action against the board where the Commission disapproves, held, that the existence of an adequate legal remedy is so uncertain and debatable that jurisdiction in a suit for an injunction could not properly be declined."

Section 5901 must be read in connection with the general statutes of the state relating to error proceedings. These are (*Section* 9127, Compiled Statutes Nebraska 1922):

> "A judgment rendered, or final order made, by a county court, justice of the peace, or any other tribunal, board or officer exercising judicial functions, and inferior in jurisdiction to the district court, may be reversed, vacated or modified by the district court."

Section 9128:

> "An order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment, and an order affecting a substantial right made in a special proceeding, or upon a summary application in an action after judgment, is a final order which may be vacated, modified or reversed, as provided in this chapter and chapter 19."

Section 9129:

> "The proceedings to obtain such reversal, vacation or modification, shall be by petition entitled "Petition in Error," filed in a court having power

to make such reversal, vacation or modification, setting forth the errors complained of, and thereupon a summons shall issue and be served or publication made, as in the commencement of an action. A service on the attorney of record in the original case shall be sufficient. The summons shall notify the adverse party that a petition in error has been filed in a certain case, naming it, and shall be returnable on or before the first day of the next term of court if issued in vacation, and twenty days before the commencement of the term; if issued in term time, or within twenty days before the commencement of the term, it shall be returnable on a day named in said summons. In all cases in the Supreme Court, if a case be docketed twenty days or more before the next succeeding term it shall stand for hearing at said term. If less than twenty days intervene, the cause shall not stand for trial, except by consent of all the parties thereto, until the second term after the docketing of said cause, except causes brought before the court in the exercise of its original jurisdiction."

Section 9130 provides for the service of the summons in error.

Section 9131 provides:

"The plaintiff in error shall file with his petition a transcript of the proceedings containing the final judgment or orders sought to be reversed, vacated or modified. No written or printed abstract or any copy of an abstract of the record shall be required in any case in the Supreme Court of this State."

Section 9132:

"Judges of county courts, justices of the peace and other judicial tribunals having no clerk, and clerks of every court of record, shall, upon request and being paid the lawful fee therefor, furnish an authenticated transcript of the proceedings, containing the judgment or final orders of said courts, to either of the parties to the same, or to any person interested in procuring such transcript."

Sections 9133, '34, '35, and '36 specify the supersedeas

undertaking to be given and by whom to be approved and the procedure to be had upon affirmance or reversal of the judgment by the district court.

We have set forth the provisions of the Nebraska Statutes relative to error proceedings to the District Court because the State Supreme Court has held that under these sections error proceedings would lie from the order of the State Board of Equalization and Assessment to the District Court of Lancaster County; that being the County in which the State Capitol is located and the County where the State Board of Equalization holds its meetings.

III.

THE ONLY SUBSTANTIAL EFFECT OF SECTION 5901 IS TO TRANSFER THE RIGHT TO PROCEED BY ERROR PROCEEDINGS FROM THE STATE DISTRICT COURT TO THE SUPREME COURT.

The Supreme Court of the State held in *State ex rel.* v. *State Board of Equalization and Assessment*, 81 Neb. 139; 115 N. W. 789:

> "The State Board of Equalization and Assessment, in valuing and assessing property for taxation, acts in a quasi judicial capacity, and its action is not subject to collateral attack, except on grounds of fraud or other wrongful conduct equivalent thereto, or for the exercise of power not conferred upon it by law.
>
> The action of such board is in its nature a final order, which may be reviewed in the district court by a petition in error."

Thus it will be seen that under the general error proceedings statutes there was a right to proceed to the District Court of Lancaster County by petition in error from an order of the State Board of Equalization and Assessment. Whether or not that affords to the Peti-

tioner any remedy will be discussed hereafter. But it is apparent that the legislature, in providing by *Section* 5901 that error proceedings might be prosecuted to the Supreme Court of the State, has accomplished nothing more than to transfer the right to proceed by petition in error from the District Court to the Supreme Court of the State. If Appellants had no adequate remedy by petition in error to the District Court they have no greater remedy by petition in error to the Supreme Court under Section 5901.

IV.

THE NEBRASKA SUPREME COURT HAS HELD THAT:

(a) THE SCOPE OF THE REVIEW OF ORDERS OF THE STATE BOARD OF EQUALIZATION AND ASSESSMENT IS VERY LIMITED.

In *State* v. *Savage*, 65 Neb. 714, 91 N. W. 716, attempt was made to mandamus the board to consider evidence in addition to what they claimed to have considered in arriving at the value of certain property for taxation purposes. The Court said Page 769:

> "We can only inquire into the matter for the purpose of determining whether respondents, in assessing the property which it was their duty to assess, have expressed an honest judgment as to assessable values, upon sufficient information, or whether the method pursued in ascertaining and fixing the value of the property assessed was in such wanton and reckless disregard of their duties as to warrant the conclusion that they acted fraudulently. It is not within the province of this Court to review the assessment made by the board, and to raise or lower it as equity and good conscience might seem to require. We can only determine whether the board has proceeded in a legal manner and, if so, we can not direct further action, even though we may disagree with the conclusion reached, or regard the

method of procedure as not the most appropriate and best calculated to secure with the greatest certainty and accuracy a true valuation of the property assessed. If they have acted by assessing all the property it is their duty under the law to assess, and have proceeded in such manner that it cannot be said they have acted fraudulently in that which they have done, the court is powerless to correct the error, even though it be conceded that the assessment as made is lower than in justice it should have been."

In *State* v. *State Board of Equalization and Assessment*, 81 Neb. 139, 115 N. W. 789, which was a mandamus proceeding to compel the State Board to convene and make and record special findings in the valuation and assessment of certain property and to allow exceptions thereto, which application was denied, the court says, page 146, 147:

"There is no provision of the statutes requiring the respondent board to keep a record of its interlocutory rulings or the reasons therefor during the progress of a hearing upon the valuation of the property of railroad corporations for the purpose of taxation. While the orderly transaction of its business may prompt the board to keep such a record of its rulings upon such matters for its own convenience, yet it is not an essential requirement for the proper performance of its duties. There is no doubt that all the steps required by the Statute in making an assessment should be preserved as a matter of record, in order to evidence and perpetuate the fact that the board has acted within its jurisdiction; but, as above stated, such record need not contain its rulings upon interlocutory questions, and when it records the matters necessary to confer upon it the power to act, its general proceedings, and the final result of its deliberations fixing the value of properties, it has performed all that the law contemplates in that behalf.

* * * As clearly pointed out in *State* v. *Savage*, *supra*, the field of review of the action of the taxing board is only a narrow one at best, and this renders

it the more essential that due regard be paid to the rights of the taxpayer during its proceedings."

In *State* v. *Morehead*, 101 Neb. 37 (161 N. W. 1040), at page 43 it is said:

"The action of the State Board of Equalization may be reviewed in the District Court by a petition in error. *State* v. *State Board of Equalization and Assessment*, 81 Neb. 139."

But this holding of the State Supreme Court, that the orders of the board may be reviewed by petition in error to the district court, was by way of denying relief by writ of mandamus. So far as we know there has never been any proceeding from the State Board of Equalization by petition in error either to the District Court or to the Supreme Court.

(b) THE SUPREME COURT OF NEBRASKA HAS ALSO HELD THAT IT WILL NOT REVIEW THE ASSESSMENT MADE BY THE BOARD, AND RAISE OR LOWER IT AS EQUITY AND GOOD CONSCIENCE SEEM TO REQUIRE, BUT WILL ONLY INQUIRE WHETHER THE BOARD PROCEEDED IN A LEGAL MANNER.

This was the holding of the Court in *State* v. *Savage*, 65 Neb. 714, 91 N. W. 716, *supra*, and is a clear and unmistakable warning to appellants that, when the only remedy which will do them any good is equitable relief from the inequitable misconduct of the State Board of Equalization and Assessment occasioned by over-assessing appellants and under-assessing all other classes of property, the State Supreme Court may not be expected to apply the remedy whether it is sought by mandamus, error proceedings or otherwise.

(c) THE STATE SUPREME COURT HAS ALSO HELD THAT ITS JURISDICTION IN ERROR PROCEEDINGS EXTENDS ONLY TO THE AFFIRMANCE ON THE REVERSAL, VACATING OR MODIFYING OF A JUDGMENT ACCORDING TO THE RECORD MADE IN THE LOWER TRIBUNAL. ORIGINAL EVIDENCE BY AFFIDAVIT OR OTHERWISE CANNOT BE RECEIVED TO ALTER, CONTRADICT OR AVOID THAT RECORD.

This rule is announced in *McDonald* v. *Bowman*, 40 Neb. 269, (58 N. W. 704), in syllabus 1:

> "The jurisdiction of this court in error proceedings extends only to the affirmance or the reversal, vacating or modifying of a judgment according to the record made in the district court. Original evidence, by affidavit or otherwise, cannot be here received to alter, contradict or avoid that record."

This rule of the state court should be borne in mind when we come to consider what record it is possible to make before the State Board of Equalization and Assessment. If the nature of the hearing before that board is such, or, if the statutory obligations of the board do not require that all facts to be considered by the board in making up their conclusion as to the value of railroad property be spread of record so as to be available for review on error proceedings, it is at once apparent that error proceedings in such cases constitute a remedy which is very far from being either full, complete or adequate.

(d) THE STATE SUPREME COURT HAS HELD REPEATEDLY THAT IT WILL BE PRESUMED THE CONCLUSION OF THE LOWER TRIBUNAL IS CORRECT AND BEFORE IT WILL DISTURB SUCH A RESULT ERROR MUST BE MADE TO AFFIRMATIVELY APPEAR ON THE FACE OF THE RECORD.

A few illustrations of such holding will be sufficient. In *Andrews* v. *Kerr,* 54 Neb. 618, (74 N. W. 1071), syllabus 2 says:

> "To warrant a reversal, that errors have been committed and the rights of the complaining party were prejudicially affected thereby must affirmatively appear of the record."

In *Ashpole* v. *Hallgren,* 60 Neb. 196, (82 N. W. 623), it is said in syllabus 2:

> "Error in the proceedings of the District Court will not be presumed, but must be affirmatively shown."

Since under the statute error proceedings from the State Board of Equalization and Assessment could not stand on any more favorable basis than error proceedings from the District Court, these rules apply.

(e) THE STATE SUPREME COURT HAS ALSO HELD THAT WHERE THE EVIDENCE ON WHICH THE LOWER TRIBUNAL HAS ACTED IS NOT PRESERVED IN A BILL OF EXCEPTIONS AND A TRANSCRIPT OF THE PROCEEDINGS IS NOT PRESENTED IT WILL BE CONCLUSIVELY PRESUMED IN THE APPELLATE COURT THAT THE FINDINGS OF FACT OF THE LOWER TRIBUNAL ARE TRUE.

In *Hoy* v. *State,* 69 Neb. 516, (96 N. W. 228), syllabus 1 says:

> "When the evidence upon which the trial court decided an issue of fact is not preserved in the record, it will be presumed that the decision is right."

In *Falstrom* v. *Banning*, 64 Neb. 339, (89 N. W. 1133), the court says:

> "The presumptions are all in favor of the regularity of the proceedings had in the district court when a cause is brought here by appeal for review of the proceedings had in that tribunal, and such presumptions will be indulged in until from the record the contrary appears. When objections are made to an order of confirmation of sale of real estate made in judicial proceedings, and the grounds of objections do not appear in the record, it will be presumed that no valid objection was presented and the order appealed from will accordingly be affirmed."

When we consider that the State Supreme Court had held in *State* v. *State Board of Equalization and Assessment*, 81 Neb. 139, (115 N. W. 789), that the Board of Equalization is not required to make a record of the reasons for its conclusions nor to set forth in the record the evidence upon which its conclusion is based, it is very difficult to understand of what value error proceedings to the State Supreme Court would be in face of the holding of that Court that it will affirm the lower tribunal unless error affirmatively appears. If we assail the order of the State Board on the ground that it is not sustained by the evidence, but is contrary to the evidence and yet the State Board is not obliged to make such a record as will disclose the evidence upon which it acted it is obvious that the State Supreme Court would grant no relief in such a case.

(f) THE STATE SUPREME COURT HAS ALSO HELD IN *Darr* v. *Dawson County*, 93 Nebr. 93; 139 N. W. 852:

> "The assessment and levy and collection of taxes are not equitable proceedings. They must necessarily be governed by rules which in many respects may be considered arbitrary. The taxing powers and taxpayers must comply with these rules."

(g) THE STATE SUPREME COURT HAS ALSO HELD THAT THE STATE BOARD OF EQUALIZATION AND ASSESSMENT IN VALUING RAILROAD PROPERTY AND EQUALIZING SAME ACTS IN A QUASI JUDICIAL CAPACITY, AND THE ORDER FIXING THE VALUATION IS A FINAL ORDER.

In *State* v. *Savage*, 65 Neb. 714 (91 N. W. 716), at page 769 the court says:

> "It is not within the province of this court to review the assessment made by the board, and to raise or lower it as equity and good conscience might seem to require. We can only determine whether the board has proceeded in a legal manner, and, if so, we cannot direct further action, even though we may disagree with the conclusion reached, or regard the method of procedure as not the most appropriate and best calculated to secure with the greatest certainty and accuracy a true valuation of the property assessed. If they have acted by assessing all the property it is their duty under the law to assess, and have proceeded in such manner that it cannot be said they have acted fraudulently in that which they have done, the court is powerless to correct the error, even though it be conceded that the assessment as made is lower than in justice it should have been."

Of course, by the same token, where the charge made is that the valuation of railroads fixed by the Board is grossly higher than it should have been the court is equally powerless, under this decision, to correct the injustice.

At page 770 the court says:

> "The State Board of Equalization it must be admitted, is an administrative body, clothed with quasi judicial powers in regard to the assessment of property it is by law required to value and assess."

In *State* v. *State Board of Equalization and Assess-*

ment, 115 N. W. 789, 81 Neb. 139, at page 140, syllabus 2 the court said:

> "The action of such board is in its nature a final order, which may be reviewed in the district court by a petition in error."

It is important to bear in mind this rule of the state Supreme Court in testing whether or not a federal court of equity has jurisdiction to entertain this cause upon the merits. If the order of the Board of Equalization and Assessment is a final order it must necessarily be because the valuation of appellant's property for taxation purposes and the equalization thereof is a completed act when the State Board of Equalization and Assessment has entered its order. There is no longer anything to be done in order to complete the assessment process. *The issues, therefore, as to the validity of the Board's order fixing values become a justiciable issue.*

The State Supreme Court has held in *Hooper Telephone Co.* v. *Nebraska Telephone Co.,* 96 Neb. 245, 147 N. W. 674, that *the Supreme Court cannot be vested by the legislature, under the Nebraska Constitution with anything but judicial functions.* In the cited case it was contended that the provisions of the Nebraska Statutes for appeal from the orders of the State Railway Commission direct to the Supreme Court were unconstitutional as an attempt to confer legislative powers upon the Supreme Court. The court held that if such were the purpose of the law and the effect of it they would not hesitate to hold the law unconstitutional, but they held that such appeal provided only for the review of judicial issues and not otherwise and therefore they upheld the appeal statute.

At page 257 of the opinion the court says:

> "Our Constitution forbids the legislature to confer legislative powers upon the court. If the statute

providing for this appeal necessarily does so, such legislation would be void."

The court, it will be seen, has held that the State Board of Equalization and Assessment in fixing the valuation of railroads for taxation purposes acts as an administrative body. Its order fixing the value is quasi judicial and is a final order. Since the court holds that such order may be reviewed to a limited extent on error proceedings and the court also holds that it is vested with jurisdiction over nothing but judicial questions, then it is obvious that the effect of the holding is that the issue as to the validity of the Board's order is a judicial question and may therefore be litigated in any court having jurisdiction.

(h) A recent decision of the Nebraska Supreme Court in *Chicago and North Western Railway Company* v. *City of Albion*, 192 N. W. 233, is, we think, quite illuminating as to what the attitude of the State Supreme Court would be on the question of the sufficiency of the evidence to sustain the order of the Board of Equalization fixing values. The cited case involved error proceedings from a city council acting as a Board of Equalization for the levying of special assessments against the railway company's property for benefits on account of paving. The Board of Equalization in that case had presented a tentative schedule of assessments and the Board was requested to make a matter of record the evidence upon which it relied to support such proposed assessment for benefits. The Board refused to disclose any information. That fact was preserved in a bill of exceptions and presented to the District Court on error proceedings and thence to the Supreme Court by appeal and the Supreme Court held that where the Board refused to disclose the evidence on which they proposed to

base the assessment and the only evidence in the bill of exceptions was offered by the railway company:

> "The Board must be considered to have acted as appraisers of the benefits, acting upon information and upon their knowledge of the property, and the fact alone that the record does not set forth the evidence upon which the Board acted will not render the assessment erroneous."

The serious aspect of the cited case to the rights of appellants in the cases at bar will become at once apparent.

V.

SECTION 5842, COMPILED STATUTES NEBRASKA, 1922, AUTHORIZES THE BOARD TO SEEK AND ACT UPON ANY INFORMATION IT MAY OBTAIN FROM WHATEVER SOURCE, AND, THE NEBRASKA SUPREME COURT UNDER THE RULE OF C. & N. W. RY. CO. V. CITY OF ALBION, SUPRA, WOULD HOLD THAT THE BOARD IS NOT OBLIGED TO DISCLOSE SUCH INFORMATION NOR EMBODY IT IN A BILL OF EXCEPTIONS FOR REVIEW BY ERROR PROCEEDINGS, AND THERE IS NO WAY WHEREBY APPELLANT COULD CAUSE ALL THE FACTS, WHICH THE BOARD CONSIDERED, TO BE EMBRACED IN A BILL OF EXCEPTIONS FOR REVIEW.

This statute expressly provides:

> "The returns of railroad companies or corporations shall not be held to be conclusive as to the value of the property, but the state board of equalization and assessment shall, *from all the information which it is able to obtain*, including records of the Railway Commission or other regulatory body, find the true value of all such property, including tangible property and franchises, and shall assess the same on the same basis as other property is hereby required to be assessed. * * *"

The State Supreme Court holds in the *Albion* case,

supra, that with the Board of Equalization producing no evidence to support their judgment and with the only evidence in the record in favor of the railway company, yet, there will be considered to have been within the breast of the Board sufficient evidence to sustain its conclusion irrespective of the railway company's evidence.

This court has held in *C. B. & Q. R. R. Co.* v. *Babcock*, 204 U. S. 585, at page 593:

> "That it would be improper and is improper to call the members of the Board as witnesses and examine them concerning the consideration which induced them to make the valuation of railroads they determined upon."

The State Supreme Court has held in *State* v. *State Board of Equalization and Assessment*, 81 Neb. 139, 115 N. W. 789, *supra*, that the Board cannot be compelled by mandamus to make a record of any findings of fact in response to requests submitted to them by the railway company concerning the issues embraced in their order fixing value.

Section 5842 *of the Statutes*, as we have seen, expressly authorizes the State Board to roam far afield and seek whatever information they may and use it, without disclosing its nature to the railroad, as a basis for their conclusion.

We ask, how all of the evidence, or any substantial part of it, which may be the basis for an order of the State Board of Equalization and Assessment fixing the value of railroads for taxing purposes is to be preserved in a bill of exceptions for review on error proceeding? The Board is not obliged to reduce to writing or make a matter of record the information upon which it bases its conclusion of value. The members of the Board cannot be examined as to the source of their information

nor the reasons for their action. The Board cannot be compelled by mandamus to make any record of the facts upon which it claims to rest its conclusion of value. On error proceedings to the State Supreme Court on such a one-sided bill of exceptions what might appellants expect save a decision as was announced in the *Albion* case, *supra*, that, in the absence of any evidence produced by the Board and notwithstanding all the evidence produced by the railroad, the Board must be considered to have acted as appraisers of the property acting upon information and upon their knowledge of the property, and the fact alone that the record does not set forth the evidence upon which the Board acted will not render the assessment erroneous. It is clear therefore, that on error proceedings the State Supreme Court would not consider the action of the Board on its merits but would, as it has previously announced, confine itself to an inquiry as to whether the Board acted in the procedural manner prescribed by statute.

The only finding which the State Board has made as to the values of appellant's property is its resolution (Rec., p. 187) which is as follows:

> "Resolved, That We, The State Board of Equalization and Assessment, in regular session held for the purpose of valuing and assessing the railroads in the State of Nebraska for the purpose of taxation of their property in the said state and having given due and full consideration to the returns furnished said Board by the several railroad companies, and having taken into consideration the main tracks, side tracks, spur tracks, warehouse tracks, roadbed, right of way and depot grounds and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand and supplies, moneys, credits, franchises and all other property of said railroad companies, and having taken into consideration the gross and net earnings of said railroads, the total amount expended in operation

and maintenance, the dividends paid, the capital stock of each system or road, and the market value thereof, and the total amount of secured and unsecured indebtedness, and from all the information which we are able to obtain do hereby ascertain, appraise, fix and assess for the purpose of general taxation the full actual value of the property of each of the several systems or companies in the State of Nebraska, as hereinafter recited."

Then is set forth the individual valuations of the several railroads.

This sort of a resolution or findings is the only thing the statute requires the Board to make. The Supreme Court of the state says it is the only finding that the State Board can be compelled to make and that mandamus does not lie to require a more complete record. The State Supreme Court says that error must appear upon the face of the record. What error is it possible to show with such a record? While it is true that this resolution of the Board may be embraced in a bill of exceptions; yet it is an empty right. It affords no illumination as to why the Board fixed the valuation which was fixed. It affords no basis upon which the State Supreme Court could administer any remedy in favor of appellants upon a claim of overvaluation and discrimination. In the face of these admitted facts we submit that the remedy by way of error proceedings from the State Board of Equalization and Assessment to the Supreme Court would afford appellants no remedy whatever. Certainly it is not that full, adequate and complete remedy which the Code contemplates as depriving the Federal District Court of equity jurisdiction.

VI.

SECTION 5901, COMPILED STATUTES OF NEBRASKA FOR 1922, DOES NOT CONTEMPLATE THAT RAILROADS SHALL HAVE ANY HEARING BEFORE THE BOARD. NO NOTICE TO RAILROADS IS REQUIRED. NO OPPORTUNITY TO PRESENT EVIDENCE IS PROVIDED FOR. IT IS ONLY BY GRACE OF THE BOARD THAT RAILROADS WOULD HAVE OPPORTUNITY TO OFFER EVIDENCE OF ANY KIND TO BE PRESERVED BY BILL OF EXCEPTIONS FOR ERROR PROCEEDINGS.

Let us analyze the section. It says:

> "The State Board of Equalization and Assessment shall, on the first Monday of July of each year, meet at the state capitol for the purpose of equalizing assessments."

Up to that point the statute provides for the time and place of meeting. Let us proceed:

> "They shall proceed to examine the abstracts of property assessed for taxation in the several counties of the state, including the railroads entirely within such county, and all other property, and shall equalize such assessment so as to make the same conform to law, and for that purpose they shall have the power to increase or decrease the assessed valuation of any county or tax district, and such increase or decrease shall be made by a percentum, and the percent of increase or decrease when made shall be certified to the county clerk of the proper county, who shall thereupon add to or deduct from the assessment of each piece or parcel of property in the county affected an amount equal to the per cent of increase or decrease fixed by the State Board."

That language fixes the duties of the Board. What are they to act upon? Why clearly they are to consider the abstracts furnished by the various counties of the state and these abstracts furnished by the counties are

to include railroads entirely within such counties. That language, with reference to railroads, was placed in this section because of the existence of one little railroad which lay entirely within one county in the state. It has no reference to railroads generally because other sections of the statute require that the State Board of Equalization and Assessment shall fix the valuation of railroads. Of course, the valuation of railroads generally is included in the abstracts from the counties because it has already been certified, previously in the month of May, to the county clerks and that valuation is returned by the county clerks as a part of their abstracts of assessments for the county. But up to this point in the statute there is no suggestion that railroads, coming individually, have a right to be before the Board to present evidence either as to over valuation or as to discrimination. The Board sits in star-chamber examining the abstracts from the counties. Then the statute proceeds:

> "The State Board shall have the power, in equalizing assessments, to increase or decrease the assessed valuation of any class, classes or kinds of property in any county or tax district, whenever in their judgment it shall be necessary to make such assessment conform to law."

That language, in our opinion, gives to the State Board the power in equalizing assessments to raise or lower the valuation of railroads in any county of the state so as to put them on a par with the valuation of other classes of property. For example, if the railroad property in any county is assessed at 100 per cent of its value and the abstracts of assessment show that other property is assessed at a different percentage then the State Board might raise or lower one class of property or the other so as to put them on a basis of equality. But what is the source of the Board's information for the purpose of

such action? Why clearly the only thing the statute contemplates the Board shall have before it is the abstracts from the counties. These abstracts show nothing which would prove a discrimination as against or in favor of one or more classes of property within the particular county covered by the abstract. The Board would find it possible to draw a comparison between valuations as between the different counties but there would be no information on the abstract to advise the Board of any discrimination between railroads and other property within a particular county. So far there is nothing in the statute which contemplates that the Board shall receive outside evidence from any source for the purpose of arriving at an equalization basis. They are to equalize based upon the abstracts from the counties before them. The only information concerning railroad valuations generally to be found in those abstracts is the identical information the Board, sitting as a Board of Assessment in May previously, has already furnished to the county clerks. Now the Board, after considering these abstracts from the various counties, has some further duties to perform. The statute proceeds:

> "In the event it shall appear to the State Board of Equalization and Assessment that a just, equitable and legal assessment of the property in the State cannot be made without increasing or decreasing the valuation as returned by any county, the Board of Equalization and Assessment shall issue a notice to the counties which the Board deems either undervalued or overvalued and shall set a date for hearing at least five days following the mailing of such notice."

Now what is the Board to do? Is it to notify the railroads that they have been overvalued as compared to others? Clearly not. The only notice provided for is to the counties. This is for the purpose of a hearing as

between the counties as such. There is no notice for any hearing of railroads. There is no contemplation in the statute that railroads as individual taxpayers have any rights before the Board.

The statute proceeds:

> "At such hearing legal representatives *of the counties* may appear and show cause why the valuation or valuations *of their county* should not be increased or decreased by the State Board, and after a full hearing, the State Board shall enter its order and certify same to the county clerks of the proper counties as hereinbefore set forth in this section."

There we have the only notice to anybody who has a right to come before the Board. It is a notice to the counties. The hearing is to be a county hearing. One county as against another county. The individual taxpayer is not to be notified. Clearly the railroads are not to be notified. They are not mentioned as entitled to any notice. If there were any doubt on this subject the following language of the statute makes it clear:

> "The notice provided for in this section shall be mailed to the county clerk, county assessor, and chairman of the county board."

Where is there any provision for notifying the railroads to come into court before the Board and make their complaint, present evidence, or defend themselves or their property in any way? There is none. The foregoing quotatons from the statutes constitute the entire procedure before the Board of Equalization. Can anyone assert from these quotations and from a study of this language that railroads have any right to be heard before the Board of Equalization and Assessment? Does the statute say anything about the right to go before the Board and present evidence and preserve a bill of exceptions of that evidence? Certainly there is no such right. Whatever hearing the railroads have is by their

own request. It is not given them by statute. Whatever evidence the railroads might present would be solely by the grace of the members of the Board. The railroads have no right to present evidence before the Board which the statute recognizes. Does this constitute even the beginning of due process of law? Does it constitute even the beginning of a remedy at law for an overvaluation as compared to other property in the State, or for an overvaluation *per se* of the railroad property? It seems to us no one can seriously claim that it does.

Next it is claimed by defendants and the District Court so held, that a federal court of equity has no jurisdiction in this case because there was an adequate remedy at law by way of error proceedings to the Supreme Court from any final decision of the Board. Here is the language of the statute:

> "From any final decision of the State Board of Equalization and Assessment, any person, county or municipality affected thereby may prosecute a writ of error to the Supreme Court and upon demand therefor the State Board shall prepare and certify a transcript of its records and proceedings involved in such decision, upon payment by the party demanding the same of a fee of ten cents for this work."

In order to understand who is contemplated as having the right to prosecute error proceedings from the order of the Board it is surely necessary to inquire what persons or corporations were present before the Board within the contemplation of the statute. Who are they? Clearly it was the persons to whom the Board had given notice. Who are those persons? The statute says:

> "The Board of Equalization and Assessment shall issue a notice to the counties."

Who is to appear before the Board in response to such a notice? The statute says:

> "At such hearing legal representatives of the counties may appear."

What individuals or persons are to receive this notice from the Board? The statute says:

> "The notice provided for in this section shall be mailed to the county clerk, county assessor and chairman of the county board."

In other words the counties and their officials named in the statute are the persons and the only persons the statute contemplates shall be heard before the Board and it follows that the remedy by way of error proceedings provided for in this section is to be taken by those persons and organizations which have had a hearing before the Board, namely: the counties, or the county clerk, the county assessor or the chairman of the county board. Those are the individuals who have been before the Board. Those are the only individuals the statute contemplates shall have any notice of any action to be taken by the Board. Clearly they are the ones the statute contemplates may prosecute error proceedings. There is nothing in the statute which contemplates that the railroads shall have any right to a hearing before the Board and clearly the provisions for error proceedings were not meant to give to railroad companies as individual taxpayers any right to prosecute error proceedings from the action of the Board sitting as a Board of Equalization.

We think therefore, that a careful reading of the statute demonstrates that the statute not only does not provide an adequate remedy at law for appellants as individual taxpayers who have been sinned agains by the State Board of Equalization through overvaluation of their property and through discrimination by undervaluation of the property of all others in the State but that the statute gives no remedy at all to appellants.

VII.

WHERE, AS IN NEBRASKA, THE ORDER OF THE STATE BOARD OF EQUALIZATION AND ASSESSMENT FIXING RAILROAD VALUATIONS FOR TAXATION, IS HELD BY THE HIGHEST COURT OF THE STATE TO BE A FINAL ORDER, AND THE STATUTE AFFORDS NO FURTHER PROCEDURE FOR INQUIRING INTO THE AMOUNT OF THE VALUATION, THE VALIDITY OF THE ASSESSMENT MAY BE LITIGATED IN THE FEDERAL DISTRICT COURT OF EQUITY, THERE BEING THE REQUISITE DIVERSITY OF CITIZENSHIP AND JURISDICTIONAL AMOUNT INVOLVED.

We have seen from the decisions of the Nebraska Supreme Court that the order of the Board of Equalization fixing the valuation of railroads for taxation purposes is a final order. We have seen that the State Supreme Court denies any jurisdiction to inquire into the equity of the valuations prescribed by the Board but will limit its inquiries solely to the jurisdictional features of procedure to be followed by the Board. We have seen that the Supreme Court has no jurisdiction, under the Nebraska Constitution, to consider any questions except those of a judicial nature. It has no administrative or legislative power and cannot be granted any under the existing Nebraska Constitution. Therefore, it is clear that under the Nebraska decisions the order of the Board fixing the valuations of railroads presented a justiciable question. The valuation was final so far as the state laws are concerned when it was fixed by the Board. The question of its validity as a whole, therefore, was a justiciable question and triable in any court which has jurisdiction. A reference to some of the cases for purposes of illustration may be useful.

In *Bacon* v. *Rutland Railroad Co.* 232 U. S. 134, it is said in the syllabus:

"Although the state statute may permit an ap-

peal from an order of the State Railroad Commission to the Supreme Court of the State, if legislative powers have not been conferred upon that court, the railroad corporation is not obliged to take such an appeal in order to obtain relief from an order that violates the federal constitution. It may assert its rights at once in federal court. The constitution of Vermont does not confer legislative powers on the courts of that state, and the appeal given by sections 4599 and 4600 published statutes of 1909 from orders of the State Railroad Commission to the Supreme Court is a purely judicial remedy."

So in the case at bar, administrative and legislative functions are not conferred on the Nebraska Supreme Court by the Constitution of the State. That court can entertain only judicial issues. Even the remedy by way of error proceedings, however limited it may be, is a judicial remedy and where it is claimed that the order of the Board of Equalization denies to the appellant equal protection of the law under the Federal Constitution and there is diversity of citizenship and the requisite amount involved, the Federal District Court has jurisdiction to entertain a bill which seeks to avoid the order of the Board on the ground that it violates the Federal Constitution.

In the recent case of *Prendergast* v. *New York Telegraph Co.* 67 Law Ed. (U. S. Sup. Ct. Rep.), p. 516, it was claimed that a Federal District Court had no jurisdiction to entertain a bill in equity because there had been a failure to apply to the Commission which fixed rates claimed to be confiscatory for a rehearing and that there had been a failure to prosecute proceedings by way of certiorari to the courts of the State. The court said, syllabus 4:

"A suit to enjoin the enforcement of rates for public service as established by a public service commission may be maintained as soon as the rates are promulgated, if the Commission has final authority

in the rate making process, although no application has been made to the Commission for a rehearing, and the prescribed rates are merely temporary, if such application is not required by law."

In the opinion, at page 517 the court says:

"Upon the making by the Commission of the order in question the proceeding had reached the judicial stage entitling the company to resort to the court for relief. (Citing cases.) * * * Here the Commission is vested with the final legislative authority of the State in the rate making process; the authority exercised by the state courts upon a review by certiorari being purely judicial and having no legislative character."

Since the order of the Board of Equalization when it fixed the valuation of the railroads was a final order and completed the assessment process provided by the State Statutes, the result, if it violated the Constitution of the United States, might be enjoined in the federal court.

VIII.

THE ADEQUATE REMEDY AT LAW REFERRED TO IN SECTION 267 JUDICIAL CODE, AS DEPRIVING A FEDERAL COURT OF EQUITY OF JURISDICTION, MUST BE A REMEDY WHICH IS AVAILABLE IN THE FEDERAL COURT. IT IS NOT ENOUGH THAT A REMEDY AT LAW MAY EXIST IN THE STATE COURT.

In *Smyth* v. *Ames*, 169 U. S. 466, at page 516 this court says, with reference to a contention that because the State Statute gave to the complaining body a remedy before the Transportation Board that such remedy deprived the Circuit Court of the United States of equity jurisdiction.

"We cannot accept this view of the equity jurisdiction of the circuit courts of the United States. The adequacy or inadequacy of a remedy at law for the protection of the right of one entitled upon any

ground to invoke the powers of a federal court, is not to be conclusively determined by the statutes of a particular state in which such suit may be brought. One who is entitled to sue in the federal circuit court may invoke its jurisdiction in equity whenever the established principle and rules of equity permit such a suit in that court; and he cannot be deprived of that right by reason of his being allowed to sue at law in a state court on the same cause of action. * * * But if the case in its essence be one cognizable in equity, the plaintiff—the required value being in dispute—may invoke the equity powers of the proper circuit court of the United States whenever jurisdiction attaches by reason of divers citizenship or upon any other ground of federal jurisdiction."

In *St. Louis, San Francisco Railway Co.* v. *McElvain*, 253 Fed. 123, at pages 135 and 136 Judge Sanborn of the Circuit Court of Appeals for the Eighth Circuit says:

"And the adequate remedy at law, which will prevent the maintenance of a suit in equity in a federal court, is a remedy as practicable and efficient to the ends of justice and its prompt administration as the remedy in equity. *Boyce* v. *Grundy*, 3 Peters, 210, 215, 7 Law Ed. 655; *Oelrichs* v. *Spain*, 15 Law, 211, 228, 21 Law Ed. 433; *Hayden* v. *Thompson*, 71 Fed. 60, 63, 17 C. C. A. 592; *Springfield Milling Co.* v. *Barnard and Leas Mfg. Co.* 81 Fed. 261, 265, 26 C. C. A. 389; *Rogers* v. *Penobscot Mining Co.* 154 Fed. 606, 613, 83 C. C. A. 380.

Moreover, it is such a remedy in a federal court only that will prevent the maintenance of a suit in equity in a national court. The fact that there may be such a remedy in a state court is not material. (Citing cases.) *Smyth* v. *Ames*, 169 U. S. 466, 516, 18 Sup. Ct. 418, 42 Law Ed. 819; *Arrowsmith* v. *Gleason*, 129 U. S. 86, 98, 9 Sup. Ct. Rep. 237, 32 Law Ed. 630; *National Surety Co.* v. *State Bank of Humboldt*, 120 Fed. 593, 602, 56 C. C. A. 657, 61 L. R. A. 394."

In the case of *Franklin County Treasurer* v. *Nevada California Power Co.*, 264 Fed. 643, the Circuit Court of

Appeals for the Ninth Circuit had before it a tax suit of the same character as the one at bar. In the syllabus the court says:

> "Under Judicial Code Section 267 providing that suits in equity shall not be sustained in any court of the United States in any case where a plain adequate and complete remedy may be had at law, the remedy at law to exclude equity jurisdiction must exist in the Federal Court."

These cases sufficiently illustrate the decisions on this point. If it were true that by prescribing a remedy at law in the State Courts the Federal Court of equity could be deprived of jurisdiction, States would no doubt become very diligent in prescribing some kind of a statutory remedy for every class of action which is now entertained in Federal Courts of equity. It was not the purpose of Congress in giving jurisdiction to the Federal Courts of controversies between citizens of different states where the amount involved exceeded $3,000 and the cause involved well recognized equitable principles that jurisdiction should nevertheless be defeated in the Federal Courts whenever, perchance, a state should enact a statute assuming to prescribe a remedy for the same wrong in the state court.

IX.

APPELLANTS HAD NO ADEQUATE REMEDY AT LAW IN THIS CASE, EVEN IF WE CONCEDE, FOR THE PURPOSES OF ARGUMENT, THAT ON ERROR PROCEEDINGS TO THE STATE SUPREME COURT A FULL SHOWING MIGHT HAVE BEEN POSSIBLE TO DEMONSTRATE THE INEQUALITY OF THE ASSESSMENT; BECAUSE, UNDER REPEATED HOLDINGS OF THAT COURT, THE ONLY REMEDY AFFORDED WOULD HAVE BEEN THE DIRECTION TO APPELLANTS TO APPLY TO THE VARIOUS COUNTY ASSESSING AUTHORITIES IN THIRTY-SEVEN DIFFERENT COUNTIES TO HAVE THE ASSESSMENT OF ALL OTHER TAXPAYERS RAISED UP TO THE LEVEL OF APPELLANTS' ASSESSMENT. BUT THE STATE SUPREME COURT WOULD NOT HAVE REDUCED THE ASSESSMENT.

The adequate remedy at law under consideration must be tested as of the time when the bills were filed. At the time the bills in this case were filed there were in Nebraska two decisions—*Lincoln Telephone Co.* v. *Johnson County,* 102 Neb. 254, and *Sioux City Bridge Co.* v. *Dakota County,* 105 Neb. 843, which represented at that time, and even at the time the cases were heard in the trial court, the settled policy of the State of Nebraska as announced by the decisions of the highest court of that State toward the individual taxpayer claiming he had been discriminated against by having his property valued at a higher percentage than the valuation fixed for other property for taxing purposes. Those decisions announce the rule that the remedy is not for the individual taxpayer complaining to have his assessment reduced to the level of the others so as to place him on an equality with them, but, the remedy there declared was for the individual taxpayer to go back to the assessing authorities in the counties and attempt to have

the property of all other taxpayers raised up to his own level. Therefore, notwithstanding any showing of inequality which might have been made before the State Board of Equalization and carried thence to the Supreme Court on error proceedings, the inevitable result, under the settled holdings of the Supreme Court of Nebraska, would have been the failure of appellants to get any relief in the State Court in these cases.

X.

THIS COURT HAS CONDEMNED SUCH REMEDY AS THE NEBRASKA SUPREME COURT POINTED OUT AS NO REMEDY AT ALL.

In *Sioux City Bridge Co.* v. *Dakota County*, 43 Sup. Ct. Rep. p. 190, 67 Law Ed. 220, this court says, after reviewing the federal decisions on the subject, p. 223:

> "The conclusion in these and other federal authorities is that such a result as that reached by the Supreme Court of Nebraska is to deny the injured taxpayer any remedy at all, because it is utterly impossible for him, by any judicial proceeding, to secure an increase in the assessment of the great mass of underassessed property in the taxing district. This court holds that the right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed, even though this is a departure from the requirement of statutes. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. In substance and effect, the decision of the Nebraska Supreme Court upholds the violation of the Fourteenth Amendment to the injury of the bridge company. We must, therefore, reverse its judgment."

It seems to us that it cannot be denied that appallants were without any remedy at law whatever, in the state court, by virtue of these adverse decisions of the highest court of the state on the subject. No matter what procedure had been followed to bring into the highest court of the state appellants' claim of overvaluation and discrimination the state court would have denied relief. Such was the condition of Nebraska law at the time the bills were filed and at the time the cases were heard in the trial court. The Nebraska decisions have been overruled in accordance with the holding of this court in the Bridge Company case since the case at bar was heard in the District Court.

Cases Cited by Appellees.

The cases relied upon in the court below by counsel for appellees are clearly distinguishable from the case at bar; and the failure so to distinguish them led the learned trial judges into error. We will refer to some of these cases as briefly as possible.

1. *Keokuk & Hamilton Bridge Co.* v. *Salm, et al.* 258 U. S. 122.

In this case it was held that the bill was without equity for three reasons: (1) Because the law of Illinois afforded ample opportunity to question the amount and the validity of an assessment, both before administrative tribunals and in its courts; (2) the plaintiff did not apply to the Board of Review to correct the assessment; (3) there was no offer to pay such amount of plaintiff's taxes as the court should find to be justly and equitably due. The last two bases of the opinion are not presented here because appellant did appear before the State Board of Equalization and present proof, and it

has offered in its bill to pay such amount of the taxes as the court may find to be justly due. (Rec., p. 14.)

Upon authority of the cases cited in the opinion the proceedings in Illinois for assessment of property for taxation are never complete until final judgment of the court is entered in the collection of the tax; the proceedings for the collection of the tax is a civil suit; and the property owner may appear in such suit and defend on any legal ground, including that of the fraudulent and discriminatory assessment. Provision is made for an appeal to the Supreme Court of Illinois from the judgment in the tax collection proceedings and a *supersedeas* issues and the property owner is fully protected in the payment of taxes pending such appeal. The proceedings for assessment merge into the proceeding for collection and the whole matter of the validity of the assessment is open for full review upon trial *de novo*.

In Nebraska, on the contrary, the assessment is complete when the State Board of Equalization certifies the result of its action to the various county clerks. No right of appeal from the determination of the state board is offered. No forum is open in which the alleged discriminatory and fraudulent assessment may be assailed and proof of its nature revealed. No trial *de novo* may be had. All that is given is the naked right to a writ of error to the Supreme Court, which, as we have endeavored to show, is a remedy without form or substance and affording no opportunity whatever for relief.

2. *Pittsburgh, etc., Ry. Co.* v. *Board of Public Works*, 172 U. S. 32.

This case involved a tax upon a railroad bridge spanning a boundary river between the states of West Virginia and Ohio. Plaintiff contended that the bridge had been assessed in West Virginia as a separate structure

and also as a part of its railway in that state, thus amounting to a double assessment. The final assessment of railroads in West Virginia is made by the Board of Public Works. Provision is made for a full hearing before such Board. From its final decision an appeal may be taken to the Circuit Court. Upon such appeal a trial *de novo* is had, and after full hearing the court is, by statute, authorized to correct the assessment, if it is found to be too high or too low, and to ascertain and fix the true value of the property according to the facts proved and to certify such value to the auditor. This procedure was by this court properly held to afford a convenient and adequate remedy for any error in the assessment.

The comprehensive scope of the proceedings upon appeal distinguishes the above case from the one before us. Section 5901 of Nebraska Statutes affords no such right of appeal. The scope of review upon writ of error is limited and the construction to be given the remedy is uncertain and doubtful, thus making clearly applicable the rule announced in *Pacific R. Co.* v. *Weld County*, 247 U. S. 282.

3. *Indiana Manufacturing Co.* v. *Koehne*, 188 U. S. 681.

In this case an alleged illegal assessment of certain letters patent was involved. Specific provision had been made in the Statutes of Indiana for the payment under protest of taxes so claimed to be void and for their recovery back in a civil suit. This remedy was held to be adequate and complete.

Such rule is not applicable here because no such right of recovery of taxes paid under protest is claimed by appellees to have been open to appellant. Furthermore, the remedy by payment under protest and recovery back is applicable only "where the assessment is wholly void

or void with respect to separable portions of the property the amount collected on which is ascertainable." *Stanley* v. *Supervisors of Albany*, 121 U. S. 535.

4. *Burrill* v. *Locomobile Co.* 258 U. S. 34.

This was an action brought in the Federal District Court to recover taxes claimed to have been paid under duress. It was contended by plaintiff that the taxes were illegal because levied under a statute which had been adjudged unconstitutional. The defendant claimed the taxes were collected under an entirely different statute which had been sustained. The Massachusetts Statutes provided a distinct remedy in such a case by petition to the Supreme Judicial Court in which recovery of illegal taxes might be had. It was held that such remedy was exclusive and barred a personal suit against the collecting treasurer. The remedy was held to be "adequate and backed by the responsibility of the state." This was not a suit in equity but an action at common law in the Federal Court, which this court held to be governed by the laws of Massachusetts, there being no conflicting practice provisions in the Federal Court or statutes.

Such a case is so far removed from the principle we are considering as to merit no further analysis.

5. *Missouri Pacific R. Co.* v. *Conway & Vilona Road District*, 280 Fed. 401.

In this case, as in those already considered, the remedy by appeal and for a trial upon the merits was specifically provided as a part of the state's taxing machinery. It is distinguishable upon the same grounds as the others.

As the foregoing cases are typical of others upon which appellees rely, we deem it unnecessary to make

specific reference to such other cases. They all relate to remedies entirely different than that provided by Nebraska statutes, and each afforded opportunity for a full hearing in a judicial proceeding where complete relief could be promptly awarded. In this distinction lies the error of the trial court.

Compare briefly the situations presented in these cases with that in the one before us. Here, as has been shown, a deliberate, systematic and long-continued practice has prevailed in Nebraska of placing upon appellant and other railroads an undue and disproportionate share of the burdens of taxation. To such extent had the practice developed of valuing railroad properties at their full value and in excess thereof, and other properties at only a fraction of their values, that it may be said to have become the settled policy of the state. That such a scheme of taxation violates the very foundations of property rights, is apparent and will not be denied. The Supreme Court of Nebraska had in recent decisions definitely announced that the only relief to be accorded to a property owner so unjustly dealt with was to apply to the various county assessing officers to have the assessments of all other taxpayers raised to the level of his own.

Lincoln Telephone Co. v. *Johnson County*, 102 Neb. 254, 166 N. W. 627 (decided March 1, 1918).

Sioux City Bridge Co. v. *Dakota County*, 105 Neb. 843, 182 N. W. 485 (decided March 25, 1921).

Such a remedy was but a mockery of justice and received no uncertain treatment and unqualified disapproval from this court in the *Sioux City Bridge Case* (43 Sup. Ct. Rep. 190).

But such was the law of Nebraska at the time of the decision of this case by the court below, and such is still the law of that state, except as its courts may be morally bound to hereafter follow the decision of the *Sioux City Bridge Case.*

With such an announced policy before it, the Legislature of Nebraska in 1921 enacted what is now Section 5901 of the Compiled Statutes of Nebraska, 1922 (Chap. 133, Laws of Neb., 1921, approved April 26, 1921). This law provided for a review upon writ of error by the Supreme Court of the proceedings of the State Board of Equalization. The legislature must have intended that such remedy would be subject to the interpretation theretofore announced by its Supreme Court in *Lincoln Telephone Co.* v. *Johnson County,* 102 Neb. 254, 166 N. W. 627 (decided March 1, 1918), and in *Sioux City Bridge Co.* v. *Dakota County,* 105 Neb. 843, 182 N. W. 485 (decided March 25, 1921). Certain it is that the Supreme Court of Nebraska would have adhered to its decision announced in the two cases last cited had this case been presented to it upon writ of error to the State Board of Equalization.

The procedure (if such it may be called) before the State Board of Equalization under Section 5901 is also of very doubtful application and of still less efficiency. As has been pointed out, no notice of the meetings of the state board were afforded to appellant, nor is any such notice required. It does not even contemplate the presence of appellant at such meetings, yet appellant, out of abundance of caution and in deference to state authority, did appear before the state board and presented its objections to the assessment and furnished evidence in support thereof. When the decision of the board was announced by which the inequalities and discriminations were confirmed, appellant was confronted

with the task of determining its remedy, and it must under the statute make its decision within ten days. Appellant knew of the various decisions of the Supreme Court of Nebraska as to its remedy for correcting unjust and discriminatory assessments. It knew that such a procedure was no remedy at all, and placed an impossible burden upon it. It could not know with assurance of the efficacy of the relief upon writ of error, except as similar procedure led to a conclusion that no relief could be expected. The Supreme Court of Nebraska had not construed or applied the new remedy and it was impossible to know just what the scope of the review would be. Under such circumstances, we submit it was justified in the conclusion that such procedure would receive the same nullifying construction as had been applied by the Supreme Court of Nebraska in the two cases referred to, and that therefore there was no remedy in the state courts.

We submit that appellant did all and more than the statutes of Nebraska called upon it to do, and lacking an adequate remedy in the state courts it sought protection of the Federal Court. No situation either of fact or of law at all comparable to this was presented in any of the cases upon which appellees will rely. No embarrassment of precedent can thus be urged to deny to appellant the relief which the injunctive process of the Federal Courts can alone afford.

Conclusion.

We have endeavored at some length to review the Nebraska decisions relating to error proceedings and to point out that such proceedings are so inadequate in tax cases of this nature that notwithstanding any kind of showing which the railroads might make before the

State Board of Equalization and assessment it would be insufficient to afford to the railroads any relief on a hearing before the Nebraska Supreme Court on error proceedings. We have endeavored to analyze that section of the Nebraska statutes which assume to give to parties interested the right to proceed from the State Board of Equalization and Assessment to the State Supreme Court by error proceedings, to show that such statute does not give to railroads as individual taxpayers any rights whatever. We have pointed out that under Nebraska decisions relating to discrimination in tax matters that even if appellants had proceeded to the Supreme Court of Nebraska by error proceedings or any other method whatever, even by a direct action in equity, they would have been denied relief in the state court.

It is apparent, we think, that appellants not only did not have any adequate remedy at law by way of error proceedings to the Supreme Court of the state, but they had no remedy at law whatever and it was the duty of the District Court, there being present diversity of citizenship and the requisite jurisdictional amount, to entertain the bill on its merits. The record shows that on the merits appellants were entitled to a temporary injunction, and indeed to a permanent injunction, against the overvaluation of their property and the undervaluation of the property of other taxpayers in all of the counties through which appellants operate, and that no less relief will preserve to appellants their rights under the Fourteenth Amendment to the Federal Constitution.

Appealing to this court as the last hope for the preservation of their rights under the Fourteenth Amendment to the Federal Constitution, appellants respectfully submit that the order of the District Court denying to

appellants a temporary injunction was contrary to law and should be reversed.

Respectfully submitted,

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FILED
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WM. R. STAN
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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1923.

No.

CHICAGO AND NORTH WESTERN RAILWAY COMPANY, *Appellant,* *vs.* W. H. OSBORNE, JR., as State Tax Commissioner of the State of Nebraska, et al., *Appellees,*	Docket No. 224. File No. 29413.
CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY, *Appellant,* *vs.* W. H. OSBORNE, JR., as State Tax Commissioner of the State of Nebraska, et al., *Appellees.*	Docket No. 225. File No. 29414.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

REPLY BRIEF OF APPELLANTS.

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WYMER DRESSLER,
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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

REPLY BRIEF OF APPELLANTS.

The brief of appellees is directed almost exclusively to the proposition that adequate remedy at law existed under the Nebraska Statutes by virtue of the provisions of Section 5901, providing for a writ of error to the Supreme Court from the final decision of the State Board of Equalization and Assessment. In support of this contention appellees cite the case of *C. R. I. & P. Ry. Co.* v. *State,* decided by the Supreme Court of Nebraska on December 31, 1923.

The so-called remedy by writ of error to the Supreme Court of Nebraska was given consideration by appellants in our original brief and we shall here confine our reply to an analysis of the Rock Island case with comments upon various statements in appellees' brief.

Decision of Supreme Court of Nebraska in C. R. I. & P. Ry. Co. v. State.

1. Assuming for the purpose of argument all that appellees claim for the decision in the Rock Island case, we contend that it can have no controlling effect here for the reason that the decision was not rendered until a year after the trial and decision of the instance case, and is at variance with several prior decisions of that court. The right of appellants to maintain this suit in equity must be determined by the status of the law existing at the time the Bill was filed or, at least, by the status of such law at the time the decision of the three judges was rendered.

Dawson v. *Kentucky Distilleries & Warehouse Co.* 255 U. S. 288.

In the Rock Island case the court holds that where there is discrimination between the assessed valuation of railroad property and other property, whereby railroad property has been assessed upon a basis of actual value and other property upon a fraction only of such value, that the railway company is entitled to have its assessment reduced to the same basis as that of other property. This doctrine is an innovation in the jurisprudence of Nebraska. By several decisions of the Supreme Court of Nebraska, rendered prior to the trial of this case, that court had announced in no uncertain terms that the only remedy of an aggrieved taxpayer for the over-assessment of his property was to procure an increase of the assessment of property under-assessed, and that the court would not reduce the assessment of the property over valued to the basis of that under valued. *Lincoln Telephone Co.* v. *Johnson County,* 102 Neb. 254; 166 N. W. 627; *Sioux City Bridge Co.* v. *Dakota County,* 105 Neb. 843; 182 N. W. 485.

The decision in the Sioux City Bridge Co. case was reversed by this court and is reported in 260 U. S. 441. Pursuant to the mandate of this court, the Supreme Court of Nebraska upon rehearing followed the directions of this court and remanded the record to the District Court. (194 N. W. 729.) Such decision was rendered by the Supreme Court of Nebraska on July 9, 1923.

Counsel for appellees, at pages 27 and 53 of their brief, state that the decision of this court in the Sioux City Bridge Company case was rendered on January 2, 1923, and that the order of the court on which this appeal is taken was not entered until January 10, 1923. This statement by appellees is apparently made in an effort to show that at the time such order was entered the law of Nebraska as announced in *Lincoln Tel. Co.* v. *Johnson County, supra,* and *Sioux City Bridge Co.* v. *Dakota County,* 105 Neb. 843, had been changed.

While it is true that the order from which this appeal was taken was not entered until January 10, 1923, the trial was had in December, 1922, was concluded on December 21, 1922, and the decision of the majority of the three judges was rendered on December 22, 1922, and at the request of counsel for plaintiffs (appellants) the effective date of the order was postponed for the purpose of enabling plaintiffs to bring in by supplemental bill the various new county treasurers who would take office on the 4th day of January, 1923, and thus bind them by whatever proceedings might be had in the action. These facts do not clearly appear from the printed record in this case, but do appear from the printed record in the case of *C. B. & Q. R. R. Co.* v. *W. H. Osborne, Jr. etc.,* which was consolidated with these cases for purposes of trial and is No. 219 on the present docket of this court. (Rec., 381 *et seq.*)

The jurisdiction of the District Court will be determined as of the time this suit was brought and not by any changes in the law subsequent to the trial of the case.

In *Dawson* v. *Kentucky Distilleries & Warehouse Co.* 255 U. S. 288, the court had under consideration this precise question, and the court by Mr. Justice Brandeis, at page 296, said:

> "But whatever remedies Section 162 is now regarded as conferring, it is clear that at the time this suit was brought they were not regarded in Kentucky as sufficiently adequate to oust the jurisdiction of equity to enjoin the illegal collection of taxes. (Citing cases.) * * * Nor is the equitable jurisdiction lost because since the filing of the bill an adequate legal remedy may have become available."

Not only does the decision in the Rock Island case overrule the previous decisions of the Supreme Court of Nebraska, but in an effort to point out the procedure by which the State Board might upon rehearing correct the inequalities which the Supreme Court of Nebraska found to exist, that court was obliged to select Section 5882 of the Nebraska Statutes, which is found in the article dealing with "Equalization of railroad property by local boards," and this it did notwithstanding the fact that Section 5883 of Nebraska Statutes, immediately following the one referred to by the Supreme Court of Nebraska, limits the scope and effect of Section 5882 to purely local assessments and expressly excludes therefrom the assessment of state, county, township, school district and road district taxes. The tax levied upon the assessment in question is a tax for state, county, township, school district and road district purposes. Both the sections referred to are quoted in the appendix.

Surely appellants in determining what course they

should pursue to obtain relief from the discriminatory and fraudulent assessments complained of could not with any justification have discovered or selected a procedure not included within the statutory procedure governing the State Board of Equalization and Assessment in the assessing of railroad property, but which precedure had to do with local assessments of cities and villages, which assessments are not involved in this action at all.

The Supreme Court of Nebraska recognized another difficulty in the following language at the conclusion of the opinion:

> "While Section 5882, Comp. St. 1922, seems to apply specifically to where 'any tax or part thereof levied under the provisions of this article shall be adjudged illegal and nonenforceable, or shall be set aside by any court of competent jurisdiction on any ground whatever,' and specifies what the duty of the board shall be as to reassessing and redetermining the value in such case, the procedure prescribed for such cases seems to be well adapted to such a case as this, where the assessment of the property of the complainant had been decided to lack uniformity with that of other classes of property."

The decision in the Rock Island case emphasizes the argument made in our original brief that the remedy by writ of error to the Supreme Court of Nebraska was uncertain and doubtful.

2. The provisions of Section 5901, Nebraska Statutes, providing for writ of error to the Supreme Court of Nebraska, as construed and applied by the Supreme Court of Nebraska in the Rock Island case, do not afford appellants an adequate remedy for the correction of the fraudulent discriminations in their assessments here complained of.

The decision in the Rock Island case does clearly recognize and find the discrimination between railroad assessments and the assessments of other property of

which we complain. That decision does in that case reverse the finding of the State Board, and remand the case to it "for further proceedings in accordance with law."

But we contend that the remedy therein indicated is still doubtful and inadequate. It is doubtful in that it does not yet appear what the State Board can or will do in carrying out the mandate of the Supreme Court. If it may be presumed that the State Board will follow such mandate, it is to be observed, however, that the Supreme Court in passing upon the question of valuations and in stating amounts which in its judgment the evidence before the Board showed such values to be, makes this significant statement:

> "The statements of value contained in this opinion are only approximate, and not intended to limit or control the State Board if or when it becomes necessary to assess or reassess the value of complainant's line of railroad in Nebraska."

The case, therefore, goes back to the State Board for a rehearing. That Board is not embarrassed by anything the Supreme Court has said, because that court has directly stated that the Board is not to be bound by its opinion on values. The question of values is the important question for determination. That question is an open one for determination by the State Board.

If the decision of the Supreme Court had placed finality upon the controversy much might be said in favor of the adequacy of the remedy there pointed out. But it is not final and it cannot be said with any assurance that the next conclusion of the State Board will be final, and surely if it does not remove the discrimination here complained of, another writ of error will follow with another reversal of the Board. Just when the assessment there in question will become a finality remains to be seen.

The opinion in the Rock Island case confirms the statements made by appellants in their original brief, that upon writ of error proceedings the Supreme Court of Nebraska would merely affirm or reverse the determination of the State Board; and that it would not consider any evidence not of record before that Board. In its decision the Supreme Court of Nebraska says:

> "We believe that, in reviewing the action of the board, we must consider only those elements of value, the existence of which rests upon the facts in evidence. * * * The following methods of valuation are presented by the record. They do not possess all the elements or factors generally required by the courts, but they are all that were before the State Board, and, since we are merely reviewing their action, we cannot consider any others."

Again the court says:

> "There are other elements of value, which, under the decisions, should or might be considered, but we are confined to the proofs which were actually before the board."

Furthermore, as we have argued in the original brief, the Statutes of Nebraska, Section 5842, direct the State Board of Equalization and Assessment to base its valuation of railroad properties not only upon the reports of railroad companies but upon "all the information which it is able to obtain, including records of the railway commission or other regulatory body." The difficulty, if not impossibility, of making a record before the State Board of Equalization, when its valuations may be obtained from such various sources, is apparent at a glance. The previous decisions of the Supreme Court of Nebraska were that the State Board could not by mandamus be compelled to make a record of the bases of its findings of valuation. *State ex rel.* v. *State Board of Equalization and Assessment*, 81 Neb. 139; 115 N. W. 789.

In the Rock Island case the Supreme Court recognizing this defect in the procedure before the State Board and referring particularly to Section 5842, says:

> "Where such information is considered, the *source from which it has been obtained* should, *so far as possible, be mentioned in the record,* so that a reviewing court may consult the same sources and thus stand in the shoes of the assessing body."

This does not in our judgment indicate an intention to overrule the case in 81 Neb. 139, just cited. We do not wish to be hypercritical, but it seems to us the State Board can comply literally with this direction of the Supreme Court by merely indicating the places from which they get their information without recording what such information was. Furthermore, the Supreme Court indicates that there may be some of this information which the Board will not be able to preserve or even to cite the source from which it is obtained. Thus is the procedure before the Board still left in doubt and still incapable of that clarity of record which must be made inasmuch as the reviewing court is bound absolutely by the record made before the State Board.

It is to be observed that the assessment of railroad property is made in May under Section 5840, and under Section 5847 the State Board is required "to immediately make return to the county clerk of each and every county in which any portion of the railroad property * * * may be located."

When the State Board meets as a Board of Equalization on the first Monday of July, pursuant to Section 5901, the valuation of railroad property has been made and has been certified to the various county clerks and has then been certified back to the State Board for equalization in connection with other property at its July meeting. It is at the July meeting that the hearing is held.

It would seem to be quite impossible at the July meeting to make a record of the sources of information as well as the information itself from and upon which the State Board based its valuation of railroad property made at the May meeting.

That no record is made before the State Board upon which the charge of fraud can be based is clearly indicated from the record of the case before the court in the case at bar. The only record that the Board made as to this assessment at its May, 1922, meeting is the resolution quoted in the bill and found at page 8 of the record. The only evidence before the Board at its July meeting as to railroad values was that furnished by appellants and the only finding made by the Board at the conclusion of that hearing was a resolution that the complainants of the complaining railroad companies be dismissed. (Rec., 167, 168.)

Even though the procedure by writ of error might be considered adequate in the ordinary case of over valuation or under valuation, it does not lend itself to an adequate determination of an alleged discriminatory and fraudulent assessment. The basis of appellants' contention in the court below and in this court is that the State Board of Equalization has continuously and intentionally discriminated between railroad property and other property in tax proceedings. Until the State Board has made its final decision at the conclusion of its July meeting the taxpayer is not in position to charge that fraud has been committed. It would be hoped, if not presumed, that the State Board would correct discriminations in these assessments, and until it had finally acted the charge of fraud could not properly be made. The place to make a record of fraud is not in proceedings before the Board, but in a separate proceeding after the Board has concluded its deliberations.

The case of *Wilson et al.* v. *Ill. So. Ry. Co.*, decided by this court January 14, 1924, involved somewhat the same charge of fraudulent assessment as is made in the case at bar, and in that case the claim was made that the District Court was without jurisdiction because of an alleged adequate remedy at law in the same court. After distinguishing the case of *Keokuk & Hamilton Bridge Co.* v. *Salm et al.* 258 U. S. 122, upon which reliance was made in that case, this court goes further and questions the adequacy of a remedy at law by appeal from the decisions and determinations of local boards, where the charge of fraud against the board is made.

Appellees argue (Brief, pp. 12, 19) that a writ of error would lie from the order of the State Board fixing the value of railroad property. We assume that counsel refers to the value fixed by the board at its May meeting, as that is the only time that the statutes of Nebraska provide for an assessment of railroad property by the State Board. This interpretation of appellees' contention is confirmed by the statement appearing at page 46 of their brief, wherein they say:

> "Appellant might have availed itself of the remedy provided in Sec. 5901, Comp. St. 1922, immediately after its property was assessed on May 1, 1922."

Assuming that the error proceedings provided for in Section 5901 are applicable to the action of the State Board in valuing railroad property in May under Section 5840 (a question as to which there would seem to be grave doubt), of what avail would such proceeding be to appellants as to the charge of discrimination and fraud? All the objections to the proceeding by writ of error from the action of the State Board at its equalization meeting in July apply with added force to such a remedy against the valuation made in May. In addition thereto are the further objections:

That at the May meeting the State Board is concerned only with the assessment of railroad property, no assessments of other property are then before the Board; the charge of fraud here made is based upon the intentional and systematic discrimination between the assessments of railroad property and of other property, and not until the July meeting are the assessments of other than railroad property before the State Board; there could not, therefore, be any relief to appellants from the wrongs here complained of by resorting to error proceedings from the action of the State Board at its May meeting.

A further reason why the proceeding by writ of error is inadequate and fails to afford protection to appellants lies in the fact that no supersedeas issues and no procedure is provided whereby the payment of taxes may be stayed pending the determination of the controversy. This is conceded by appellees at page 45 of their brief. In equity the court upon summary hearing fixes the proportion of the taxes which must be paid as a condition of a preliminary injunction. Upon such payment being made, collection of the remainder of such taxes is enjoined until determination of the suit. Not so upon writ of error. No preliminary summary hearing is had. There is but one hearing and that is the final one in the reviewing court, as the result of which the finding of the State Board is affirmed or reversed. If reversed, as in the Rock Island case, all that the Supreme Court does is to remand the proceedings to the State Board. No proportion of the taxes are held to be excessive, but the whole assessment is set aside and a new assessment made. In the meantime the taxes involved may be collected by distress warrants under Section 6010, Nebraska Statutes (quoted at page 30 of appellants' original brief); or the agents of appellants may have been con-

victed and fined under Section 6017, Nebraska Statutes (quoted at page 31 of appellants' original brief).

But appellees say (Brief, p. 45):

> "No stay of proceedings can be involved in the error proceedings as the cases would have been finally determined long before the statutory liens attached."

Upon what authority do appellees base such assurance? Certainly not upon any statute, for none such exists. If upon the assumption that in the due administration of the law such final decision would be announced prior to the following first day of February, it is but necessary to point out that delays do and will occur even in the orderly and due administration of justice. The decision in the Rock Island case was rendered on December 31st, but there only one railroad was concerned, a much smaller amount of taxes was involved, and a much briefer record was presented. In a case where the taxes of three railroads were involved, each necessitating individual consideration, so far at least as the value of its property was concerned, a decision by the Supreme Court prior to February first would hardly be expected. In the determination of so important a question as the jurisdiction of the United States courts, the issue should not be made to turn upon the exigencies of prompt or delayed decisions of state tribunals.

But let us assume once more that a decision of the Supreme Court of Nebraska upon error proceedings would be rendered prior to February 1st, what is to prevent the various county treasurers from proceeding on February 1st to collect the taxes either by distress warrants or by prosecuting appellants' officers? The statutes (Sections 6010 and 6017) make it the positive duty of the county treasurers to collect these taxes at the time stated. They are not parties to the error proceed-

ings and therefore not bound by the decision therein. *To prevent such action by the county treasurers would necessitate the application to a court of equity for injunctive relief.* Immediately the inadequacy of the remedy by error proceedings must be supplemented by the exercise of equitable jurisdiction. So important it is to have before the court the officers who are charged with the collection of these taxes that appellants advisedly requested of the trial court in this case, (as has been hereinbefore pointed out) that the effective date of the order be postponed until the newly elected county treasurers had taken office in order that the stay of proceedings pending appeal would be binding upon them.

Let us go one step further. There is of course no assurance as to what the decision of the Supreme Court of Nebraska in a given case will be. In the Rock Island case a decision favorable to the railway company was rendered. In another case the court may decide that the plaintiff in error has not successfully attacked the determination of the State Board. Surely the plaintiff in such action would have the right to a review of such judgment by this court upon writ of error or upon certiorari. In such event the time for payment of taxes would expire, and, as no supersedeas from this court could affect public officers not parties to the record, such officers would be required to collect such taxes. If any remedy exists for a recovery of taxes paid under such circumstances, there would of necessity be a multiplicity of such actions, made necessary by the very inadequacy of the remedy in this statutory error proceeding.

We are unable to appreciate the significance or applicability of Section 266 of the Judicial Code quoted at page 45 of appellees' brief. The provisions quoted are based upon two conditions, neither of which are presented here. The staying of proceedings in the federal court is conditioned upon the fact of an action pending

in the state court "to enforce such stay or order," and a stay in such state court in proceedings under such stay or order. No such action was or is pending in the state courts of Nebraska, nor can any stay of proceedings be granted by writ of error to the Supreme Court of Nebraska from the State Board. No basis exists for any analogy between the quoted provisions of Section 266 and the general equity jurisdiction of the federal courts.

The brief of appellees proceeds upon the theory that we are here dealing with the ordinary case of overvaluation of property for which a satisfactory remedy is provided. They ignore the significant and controlling elements of discrimination and fraud which distinguish all the cases upon which appellees rely. Aside from the decision of the Supreme Court of Nebraska in the Rock Island case, no case is cited which approaches the case at bar in either facts or law. We have, we believe, satisfactorily shown the total inadequacy of the remedy adopted in the Rock Island case, and that in any event it cannot control the decision here, as it was not the law of Nebraska when this case was commenced and decided. There is presented in the record before us all the essential elements of federal equity jurisdiction, the exercise of which can alone afford any adequate relief from what is admittedly a clear case, not only of overvaluation but of intentional and systematic discrimination and fraud.

The order appealed from should be reversed.

Respectfully submitted,

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APPENDIX.

SECTION 5882. REDETERMINATION OF VALUE OF PROPERTY. If any tax or part thereof levied under the provisions of this article shall be adjudged illegal and non-enforceable, or shall be set aside by any court of competent jurisdiction on any ground whatever, it shall be the duty of the board, whether any part of the taxes assessed and levied have been paid or not, to forthwith reascertain and redetermine the value of the property of such company or companies, if the same shall be called for by such decision of the court; and, when such reassessment has been made, to make duplicates of the original assessment rolls with their valuations thereon and return the same to the respective officers of the cities and counties as provided in the fifth next preceding section. Whereupon it shall be the duty of the city and county officers, respectively, to make a new computation and extend new levies of taxes against the company or companies affected by the order of the court, which taxes shall be of the same force and effect as an original assessment and levy made in accordance with law. The proceedings for such reassessment and for the extension and collection of taxes upon such duplicate assessment rolls shall be conducted in the method originally provided, as near as may be. The power is hereby given to reassess the property of any company as often as may be necessary until the amount of taxes legally and justly due from any company for any year have been finally and definitely determined under the provisions of this article. In case relevies shall be made, credit may be given thereon of any amounts paid upon the prior levy.

SECTION 5883. LIMITATIONS OF ARTICLE. This article

shall not apply to, nor in any manner affect, the assessment, equalization, levy or collection of any state, county, township, school district or road district tax, nor shall it affect any assessments or levies heretofore made upon any property in the State of Nebraska. Nor shall this article be construed to affect any specific tax which may now or which shall hereafter be provided for by law, upon the property or business of any company or association within this state.

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Docket Number 863. File Number 29413.

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1923.

CHICAGO & NORTH WESTERN RAILWAY COMPANY, APPELLANT,

V.

W. H. OSBORNE, JR, AS STATE TAX COMMISSIONER OF THE STATE OF NEBRASKA, ET AL, APPELLEES.

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BRIEF OF APPELLEES.

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O. S. SPILLMAN, Attorney General of Nebraska.
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HUGH LAMASTER, Assistant Attorney General.
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STATEMENT.

These are direct appeals from the United States District Court, District of Nebraska, constituted under Section 266 of

the Judicial Code, with three judges, in which plaintiffs sought interlocutory injunctions against W. H. Osborne, Jr., as Tax Commissioner of the State of Nebraska, and the treasurers of the several counties, traversed by plaintiffs' lines, to restrain the enforcement of taxes assessed and levied against them by the State of Nebraska through its board of equalization and assessment. Defendant Osborne moved to dismiss (Tr. p. 16), and upon the application for interlocutory orders all defendants objected to jurisdiction on the ground that each of the plaintiffs had a plain, adequate and complete remedy at law for its protection against the alleged wrongs charged in its petition, by means of an error proceeding from the State Board of Equalization and Assessment to the Supreme Court of the State of Nebraska.

Insufficiency of fact to constitute a valid cause of action and lack of the jurisdictional amount as to each defendant were also stated in the motion. Subsequently all defendants moved to dismiss (Tr. p. 36).

The respective parties produced their evidence. The court entered the following order in each case (Tr. p. 27):

> "Now on this 10th day of January, A. D., 1923, this cause having heretofore been taken under advisement by the court on plaintiff's application for a temporary injunction the court being well advised in the premises, doth find;
>
> "That plaintiff for the redress of the wrongs recited in its petition had an adequate remedy at law under the statutes of the State of Nebraska in prosecuting error proceedings to the Supreme Court of the State of Nebraska, and for that reason there is no equity in the application for a temporary injunction.
>
> "It is therefore considered by the court that plaintiff's application for temporary injunction be and hereby is denied.

"To all and singular the findings and judgment of the court plaintiff excepts and its exceptions are hereby allowed. By the Court: Robt. E. Lewis, Circuit Judge. Thos. C. Munger, District Judge. J. W. Woodrough, District Judge."

Diversity of citizenship is alleged. The gravamen of each complaint is that appellant's property was intentionally and wrongfully over-assessed (Tr. p. 8), while other property was intentionally and wrongfully under-assessed (Tr. p. 11). The defendants insisted throughout the hearing that there was no jurisdiction because there was a plain, adequate and complete remedy at law by way of an error proceeding from the state board of equalization and assessment to the Supreme Court of Nebraska; that there being such a remedy the Federal Courts, under the principles of equity administered by such courts, would decline jurisdiction; that the Federal Courts would not act until the procedure provided by the laws of the state had been followed to a conclusion.

By stipulation these two cases are consolidated for hearing upon one brief. References to the pages of the record are to the record in the Chicago and Northwestern case.

BRIEF OF ARGUMENT.

I. Method of Taxation of Railroad Properties in Nebraska.

Property generally in Nebraska is assessed by precinct assessors under the direction of county assessors. Railroad property is assessed by the state board of equalization and assessment. The method of assessing railroad property is governed principally by these sections of the compiled statutes of Nebraska, for 1922: 5898, 5820, 5904, 5905, 5839, 5840, 5841, 5842, 5844, 5847, 5848, 5849, 5850, 5901, 6010 and 6017.

Other sections cover other phases of the subject not material to this case. (All references herein are to the compiled statutes of Nebraska for 1922).

The sections named are as follows:

5898. The Governor, Secretary of State, State Auditor, State Treasurer and Tax Commissioner are hereby constituted the State Board of Equalization and Assessment. The Tax Commissioner shall be secretary of said board, and as such perform such duties as may devolve on him by law or the rules and regulations of the board. He shall have authority to administer oaths and affirmations and to call special meetings of the board at such times as its business may require.

5820. All property in this state, not expressly exempt therefrom, shall be subject to taxation, and shall be valued and assessed at its actual value. "Actual value," as used in this Act, shall mean its value in the market in the ordinary course of trade.

5904. The State Board shall determine the amount of all taxes required for state purpose, and the rate of taxation upon all tangible property in the state necessary to raise the same, and make a levy of such taxes throughout the state. The rate of the general state tax on tangible property together with the state tax on intangible property shall be sufficient to realize the amount necessary to meet appropriations made by the legislature for the year in which the tax is levied, and an additional sum not exceeding twenty per cent of the amount of any existing state indebtedness.

5905. On or before the second day of August in each year the State Board shall transmit to the county clerk of each county a statement of the rate of taxation required for the general state tax, the state school tax and any other general or special taxes, as directed to be levied and collected by the State Board.

5839. The State Board of Equalization and Assessment is hereby empowered, and it is made its duty, to

assess all property of the railroads and railroad corporations in the State of Nebraska; Provided, however, that all machine repair shops, general office buildings, store houses, and also all real and personal property outside of right-of-way and depot grounds, as of and belonging to any such railroad and telegraph companies, shall be listed for purposes of taxation by the principal officers or agents of such companies with the assessors of any precinct of the county where such real or personal property may be situated, in the manner provided by law for the listing and valuation of real and personal property.

5840. The Board on the first Monday of May of each year shall proceed to ascertain all property of any railroad company, owning, operating or controlling any railroad or railroad service in this state, which for the purpose of assessment and taxation, shall be held to include the main track, side track, spur tracks, warehouse tracks, roadbed, right-of-way and depot grounds, and all water and fuel stations, buildings and superstructures thereon, and all machinery, rolling-stock, telegraph lines and instruments connected therewith, all material on hand and supplies provided for operating and carrying on the business of such road, in whole or in part, together with franchises and all other property of such railroad company used or held for the purpose of operating its road, and appraise and assess the same as personal property as herein provided.

5841. On or before the fifteenth day of April in each year, the person, company or corporation owning, operating or controlling any railroad or railroad service in this state, shall, by its president, secretary or principal accounting officer, return to the State Board of Equalization and Assessment a sworn statement or schedule of the property of such company on the thirty-first day of March preceding, as follows:

(1) Of the right-of-way, track and roadbed, giving the entire length of the main track in this and other states, and showing as to this state the portion in each governmental subdivision;

(2) The length of each side or second track and turn-out, spur and warehouse track and aggregate length of such side or second track, turn-out, spur and warehouse tracks, together with the name of the governmental subdivision in which such side or second track and turn-outs, spur and warehouse tracks are located;

(3) A complete list giving size, location as to governmental subdivision, material and value of all depots, station houses, machine shops, stockyards, scales or other buildings situated wholly or in part on the right-of-way, together with all platforms, fuel and water stations, and the machinery and tanks connected therewith;

(4) Showing the number of ties in track per mile, the weight of iron or steel rails per yard, used in the main or side track; what joints or chairs are used in track, kind of ballasting; length of time iron or steel has been used, and what length of time the road has been built;

(5) A full list of the rolling stock belonging to or operated by such road, which shall distinctly set forth the number, class and value of all locomotives, passenger cars, dining cars, express cars, mail cars, baggage cars, grain cars, box cars, horse cars, cattle cars, coal cars, flat cars, wrecking cars, pay cars and all other kinds of cars owned or used by such company, whether within or without the State of Nebraska, together with a statement of the number of miles traveled by each of the classes of cars over the line of such company within the State of Nebraska and without the State of Nebraska, separately, during the year preceding the first day of January last past;

(6) A statement or schedule showing: (1) The amount of capital stock authorized, and the number of shares into which said capital stock is divided; (2) The amount of capital stock paid up; (3) The market value of such stock, or if of no market value, then the true value of the shares of stock; (4) The total amount of all secured and unsecured indebtedness, except for current expenses of operating the road; (5) The location

and actual valuation of all its real estate and personal property in this state that is locally assessed. Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the State Board of Equalization and Assessment, which values shall be taken into account and be considered in arriving at the true value of such railroad property and its franchises;

(7) A correct return of the value of all tools and materials used for repairs, and of all other personal property in the State of Nebraska, together with such other information as the State Board of Equalization and Assessment may require in order to enable them to apportion such rolling stock between the main line and branches of the road;

(8) A true statement of all bridges, showing where located as to governmental subdivisions, the true value thereof, kind and material, the length, width and height of such structure;

(9) The total gross earnings and net earnings of said corporation during the year for which said statement is made, and the total amount expended in the operation and maintenance of the property and the improvements thereof, distinguishing that expended in improvement or betterment from that expended in maintenance and operation; also the dividend last declared upon its shares and the amount thereof, and the date, number and the amount of all dividends declared upon its stock during the year next preceding the date of such report, and such other information as the State Board may in writing require, all of which shall be taken into consideration in ascertaining and fixing the value of such road and the franchise thereof, together with such other information as the State Board may require in relation thereto.

5842. The returns of railroad companies or corporations shall not be held to be conclusive as to the value of the property, but the State Board of Equalization and Assessment shall, from all the information which it is able to obtain, including records of the Railway Com-

mission or other regulatory body, find the true value of all such property, including tangible property and franchises, and shall assess the same on the same basis as other property is hereby required to be assessed. The valuation of each mile shall be determined by dividing the whole value by the number of miles of the main track of each road or line.

5844. Any railroad company operating any road within the State of Nebraska shall annually, on or before the first day of April, report to the County Clerk of each county through which its line of road runs the number of miles of main track situated within each governmental subdivision in the county, together with all machine and repair shops, general office buildings, store houses, and all real and personal property not on the right-of-way.

5847. The State Board of Equalization and Assessment, after having valued and assessed all the railroad property in this state in accordance with the provisions of this article, shall immediately make return to the County Clerk of each and every county in which any portion of the railroad property as designated in this article may be located, to be used as the basis of levy for the county and governmental subdivisions through which any railroad or part thereof may extend.

5848. Such return shall include the following:

(1) Number of miles of track of each railroad located in each governmental subdivision in the county, and the total length of such road in the county;

(2) The average valuation per mile of such road;

(3) The valuations that shall be placed to the credit of such governmental subdivision in the county.

5849. The State Board shall transmit to each county, as soon as practicable after receiving returns from the railroad company, a statement from such returns showing as to each county and railroad all machine and repair shops, general office buildings, store houses, and also all real and personal property outside of such railroad

right-of-way, and depot grounds, not included in the property herein required to be assessed by the State Board of Equalization and Assessment, and in what governmental subdivision located, which return shall be for the benefit of the county board and local assessors.

5850. Railroad property assessed by the State Board shall be apportioned by the County Clerk among the respective governmental subdivisions in which the same may be entered on the tax list and collected by the County Treasurer.

5901. The State Board of Equalization and Assessment shall, on the first Monday of July of each year, meet at the state capitol for the purpose of equalizing assessments. They shall proceed to examine the abstracts of property assessed for taxation in the several counties of the state, including the railroads entirely within such county, and all other property, and shall equalize such assessments so as to make the same conform to law, and for that purpose they shall have the power to increase or decrease the assessed valuation of any county or tax district, and such increase or decrease shall be made by a percentum, and the per cent of increase or decrease when made shall be certified to the county clerk of the proper county, who shall thereupon add to or deduct from the assessment of each piece or parcel of property in the county affected an amount equal to the per cent of increase or decrease fixed by the State Board. The State Board shall have the power, in equalizing assessments, to increase or decrease the assessed valuation of any class, classes or kinds of property in any county or tax district, whenever in their judgment it shall be necessary to make such assessment conform to law; and such increase or decrease, when made, shall be certified to the county clerk and by the county clerk extended upon the tax rolls as hereinbefore provided; but in the extension of valuations the county clerk shall reject all such amounts as may fall below two dollars and fifty cents, and all amounts of two dollars and fifty cents or more shall be extended as the next higher five dollars or multiple

thereof, this making all valuations end in cipher or five. In the event it shall appear to the State Board of Equalization and Assessment that a just, equitable and legal assessment of the property in the state cannot be made without increasing or decreasing the valuation as returned by any county, the Board of Equalization and Assessment shall issue a notice to the counties which the Board deems either under-valued or over-valued and shall set a date for hearing at least five days following the mailing of such notice. At such hearing legal representatives of the counties may appear and show cause why the valuation or valuations of their county should not be increased or decreased by the State Board, and after a full hearing, the State Board shall enter its order and certify the same to the county clerks of the proper counties as hereinbefore set forth in this section. The notice provided for in this section shall be mailed to the county clerk, county assessor, and chairman of the county board. From any final decision of the State Board of Equalization and Assessment, any person, county or municipality affected thereby may prosecute a writ of error to the Supreme Court and upon demand therefor the State Board shall prepare and certify a transcript of its records and proceedings involved in such decision, upon payment by the party demanding the same of a fee of ten cents for each one hundred words. Notice of intention to obtain a review shall be filed within ten days from the date of the entry by the Board, and when docketed said cause shall be given precedence by the Supreme Court over all civil cases.

6010. The county treasurer is hereby required, during the month of December of each year after the personal taxes for the year have become delinquent, to notify by mail all persons of the amount of their delinquent personal tax, and that unless the same is paid by February first next following, distress warrant will be issued therefor. The treasurer shall, on and after the first day of February next after the personal taxes for the last preceding year have become delinquent, collect the same, together with interest and costs of

collection, by distress and sale of personal property belonging to the person against whom levied in the manner provided by law for the levy and sale of personal property on execution. Distress warrants shall be issued against all persons having delinquent personal tax for each year, and each such warrant shall include all delinquent personal taxes of the person against whom issued, unless such person shall, on or before February 1st, file with the treasurer an affidavit that he is unable, by reason of poverty, to pay any such tax, in which case distress warrants shall not issue until ordered by the county board.

6017. When any corporation doing business in this state shall fail or neglect to pay any tax assessed or charged against it, when the same shall have become delinquent, the county treasurer shall notify any agent or officer of the company in the county where such tax is delinquent that the same is delinquent, and the amount due, and shall further notify the officer or agent to pay over all moneys that may be in his hands, or that may afterwards come into his hands, belonging to such corporation, not exceeding the amount of tax due, to such county treasurer; and if such agent or officer shall fail to pay over the money to the county treasurer, he shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars, nor more than five hundred dollars.

II. Summary of Laws Relating to Taxation of Railroads.

Briefly summarized the important features of the foregoing sections of the statute may be stated thus: They provide that the state board of equalization and assessment, consisting of the governor and four other state officers, shall determine the rate of taxation that will be sufficient to realize the amount necessary to meet appropriations made by the legislature for the year in which the tax is levied, with an additional sum to apply on existing indebtedness. In order to enable the board to ascertain the value of railroad property, the

railroads are required to furnish annual statements showing the kinds and amounts of property they own and showing their financial conditions. Upon the information furnished by the railroads and from other information obtained by the board it fixes the value of railroad property. If any railroad company be dissatisfied with the valuation fixed by the board of equalization and assessment, it has a plain, adequate and complete remedy by means of an error proceeding to the supreme court of the state.

Properties not immediately connected with the right-of-way and terminal property are assessed by the local assessors. Taxes on such forms of property are not involved in this suit.

Section 5823 provides for lien as follows:

> "Taxes assessed upon personal property shall be a first lien upon the personal property of the person to whom assessed from and after the first day of November of the year in which they are assessed, until paid."

As railroads are assessessed as personal property, the lien for taxes attaches on November 1st of the year in which assessed. Interest is charged on such taxes after December 1, as provided in section 6002, which is, in part, as follows:

> "On the first day of December of the year in which taxes shall have been assessed, all unpaid personal taxes, except in cities authorized by law to levy and collect their own taxes shall become delinquent and shall draw thereafter ten per cent per annum, which interest shall be collected the same as tax so due."

Distress warrants for the collection of personal taxes are issuable by county treasurers on February 1st of the year succeeding the year in which the taxes are levied.

In the present case there is no controversy as to rate of taxation; it relates entirely to valuation of the property.

III. Valuation of Property for Taxation a Judicial Function.

The words "levy" and "assessment" are used with various meanings. They are used here with the same meanings as in the Nebraska statutes. Under paragraph 10 of article 6 of the revenue law, section 5861, the word assess is defined as follows:

> "The term 'assess,' as used in this article, shall include within its meaning valuation of property for the purpose of taxation."

The term "levy," as it is used in section 5904, above quoted, refers to the amount of all taxes required for state purposes and the rate of taxation to meet the amount appropriated by the legislature. It does not refer to the making of a valuation. It is also provided, by section 5979, that after equalization has been had, county boards shall levy the necessary taxes for the current year. This is after valuation and equalization are completed. Section 5979 is, in part, as follows:

> "The county board of equalization shall adjourn from time to time until the action of the state board of equalization and assessment shall have been had and certified to the county clerk, and, on the last day of sitting as a board of equalization, the county board shall levy the necessary taxes for the current year, including all county, township, city, school district, precinct, village, road district and other taxes required by law to be certified to the county clerk and levied by the county board: Provided, any such taxes regularly voted and certified to the county clerk, after the county board shall have made such levy and before the county clerk shall have completed the tax list, shall be levied by the county clerk, if within the limit of the law, and extended upon the tax list the same as if levied by the county board."

Taxation according to value requires three processes: Listing of property, valuation of property and fixation of the

rate of taxation. The processes are separate and distinct and involve different functions. In Nebraska appropriations by the legislature precede the assessment and the levy of taxes. The determination of the amount that must be raised by taxation is legislative but the actual valuation of property as a basis for the levying of taxes is judicial in its nature. It is usually said that valuing or assessing officers act quasi-judicially. Valuation is a judicial function:

Cooley on Taxation, 3d Edition, p. 751.

In *Slaughter* v. *City of Louisville*, 89 Ky. 112, its it said (121):

> "It is well settled that the valuation of property, for the purpose of *ad valorem* taxation, is, in its character a judicial act."

In *State ex rel. Goff* v. *County Board of Dodge County*, 20 Neb. 595, the court said, (p. 599):

> "It will thus be seen that the assessor is to fix the actual assessable value of the taxable property named in his territory. In fixing such values, he acts judicially. Cooley on Taxation, p. 550, *et seq.*, and cases cited. His assessment, therefore, becomes final—as much so as a judgment of a court upon a subject where it has jurisdiction, unless reviewed in the mode provided by law. The assessor is required to ascertain the value of each tract of land assessed by him, not by hearsay, not by calling witnesses, but by actually viewing the land itself. The evident object of the statute is to enable the assessor to fix the true value of the land, and in the absence of any proof upon the subject the presumption is that he has done his duty.

In *Dixon County* v. *Halstead*, 23 Neb. 697, the court said (p. 701):

"Where property has been duly assessed, the owner may rest securely upon the valuation so fixed, until a case is established authorizing an addition to the assessed valuation of such property. The assessor acts in a judicial capacity in making an assessment of property. The law presumes that he will do his duty faithfully, fearlessly, and impartially; therefore, to authorize the board of equalization to increase the assessment of an individual, a complaint must be made and testimony taken upon the same, authorizing such increase. Otherwise the board will have no power."

In *State* v. *Savage*, 65 Neb. 714, the Supreme Court of the state said (p. 770):

"The state board of equalization, it must be admitted, is an administrative body, clothed with quasi-judicial powers in regard to the assessment of property it is by law required to value and assess. It has the right to exercise a fair discretion in expressing its judgment as to the valuation of such property; and when it has once acted, and there is no fraud shown, its judgment cannot be controlled by the writ of mandamus."

In *State* v. *State Board of Equalization and Assessment*, 81 Neb. 139, the language in *State* v. *Savage, supra,* that the state board of equalization and assessment is clothed with quasi-judicial powers as to the valuation of railway property, was quoted approvingly (143).

In *Hacker* v. *Howe*, 72 Neb. 385, the court said (p. 393):

"The actions not only of the county assessor in fixing the valuation in the first instance, but also that of the county board of equalization and of the state board of equalization in equalizing as between different counties, are in their nature quasi judicial."

The court also recognized the doctrine laid down in *State* v. *Savage, supra,* that in assessing property the state board of equalization is clothed with quasi judicial powers.

In *Hagar* v. *Reclamation District,* 111 U. S. 701, this court considered the functions of assessing property and said (710):

> "But where a tax is levied on property not specifically, but according to its value, to be ascertained by assessors appointed for that purpose upon such evidence as they may obtain, a different principle comes in. The officers in estimating the value act judicially; and in most of the states provision is made for the correction of errors committed by them, through boards of revision or equalization, sitting at designated periods provided by law to hear complaints respecting the justice of the assessments."

IV. The Action of the Board in Assessing Railroad Property is a Final Order.

In *Sioux City & Pacific R. Co.* v. *Washington County,* 3 Neb. 30, it was held that the action of the county board in raising the assessment of plaintiff's property was a final order.

In *State* v. *State Board of Equalization and Assessment, supra,* it is said (p. 143):

> "We also find that we have uniformly held that the action of a taxing board is in its nature a final order, which cannot be attacked collaterally, and can only be reviewed on error or appeal."

V. Valuation, Not Levy, Reviewable.

In *Chapel* v. *Franklin County,* 58 Neb. 544, an action to recover taxes paid under protest alleged to have been based on an excessive assessment, the court said (p. 545-6):

"It also shows that Chapel, being dissatisfied with the action of the town board, presented his grievance to the county board of equalization, where a hearing was had and an order made reducing the assessment from $1,718 to $1,546. This order, never having been reversed, vacated, or modified, fixed conclusively the value of plaintiff's personal estate for the purposes of taxation. Being a judicial order, it might have been reviewed in the district court, but it is not subject to collateral attack."

In *McGee* v. *State*, 32 Neb. 149, it is paid (p. 153):

"The town board in correcting assessments, acts judicially, which action is final and conclusive, unless corrected in the manner provided by law."

In *Whedon* v. *Lancaster County*, 76 Neb. 761, a resident taxpayer appealed from the order of the county board levying taxes on the ground that the taxes were excessive, extravagant, exorbitant, and illegal. The District Court sustained a demurrer to the petition and the Supreme Court of Nebraska affirmed the decision. The court said (p. 763):

"A careful examination of our present revenue law discloses that it contains no provision for an appeal from the order of the county board in making the tax levy. We therefore conclude that it was not the intention of the legislature to allow a taxpayer to appeal from such order.

"An assessment means the determination of the value of a man's property for the purpose of levying a tax; and official listing of persons and property with an estimate of the value of the property of each for purposes of taxation. 3 Cyc. 1111.

"This clearly distinguishes the act of assessment from the order constituting the tax levy. A proper and legal assessment must first be made, and the value of the

taxable property of the county must be thus ascertained as a basis for the subsequent act of levying sufficient taxes to conduct the governmental affairs of the state, the county and its several municipalities. So, the statute providing for an appeal from the decision of the board of equalization in certain matters of assessment can have no application whatever to the subsequent action of the county board by which the tax is levied."

"* * * Again, it would seem clear that the legislature never intended to confer jurisdiction upon the courts by appeal to review or control the discretion of the county board in the matter of levying taxes. To grant the district court such powers would, in effect, substitute its discretion for that of the county board, the tribunal to which the statute has specifically committed that duty. So, we are of opinion that the right of appeal to the district court from an order of the county board in making the necessary tax levy under the provisions of Section 137, Art. I, Ch. 77, Comp. St. 1903, does not exist, and therefore that court was without jurisdiction to hear and determine the matters set forth in the appellant's petition."

McCague Inv. Co. v. *Metropolitan W. D.*, 101 Neb. 820.

Beadle v. *Sanders*, 104 Neb. 427, approves the Whedon case.

It is not the position of appellees, as seems to be assumed in the brief of appellant, that the Supreme Court of Nebraska has legislative power in matters of taxation, or that it will re-assess the properties of railroad companies. As hereinafter explained, its functions are to determine petitions in error and if it find the decision of the board to be manifestly wrong it will reverse such decision and remand the matter to the board for further proceeding.

Chicago, Rock Island & Pacific Ry. Co. v. *State,* (unreported, decided by Nebraska Supreme Court December 31, 1923). The opinion is reprinted as an appendix to this brief.

The board has no discretionary power (except as noted below) as to the amount of money to be raised. It computes the amount from the legislative acts and then simply perfoms the arithmetical operation of finding what the necessary rate will be. Its only discretionary function in making the levy is as to the amount that will be raised to apply on existing indebtedness. No question involving that power is before the court. The controversy here relates purely to the judicial function involved in valuing appellant's property. Under the statute above quoted (Sec. 5901) an error proceeding may be prosecuted to the Supreme Court from a finding of value.

VI. The Remedy by Writ of Error is Plain, Adequate and Complete.

Attention should be called to the cases decided prior to the case of *The Chicago, Rock Island & Pacific Railway Co.* v. *State, supra,* just decided by the Supreme Court of Nebraska, and to some of the constitutional provisions and certain statutes.

The constitution of Nebraska provides, article 1, section 24,

> "The right to be heard in all civil cases in the court of last resort, by appeal, error or otherwise, shall not be denied."

Section 9127 of the statutes provides:

> "A judgment rendered, or final order made, by a county court, justice of the peace or any other tribunal, board or officer exercising judicial functions, and inferior in jurisdiction to the district court, may be reversed, vacated or modified by the district court."

Section 9128 provides:

> "An order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment, and an order affecting a substantial right made in a special proceeding, or upon a summary application in an action after judgment, is a 'final order' which may be vacated, modified or reversed, as provided in this chapter and chapter 19."

Section 9129 provides in part as follows:

> "The proceedings to obtain such reversal, vacation or modification, shall be by petition entitled 'petition in error', filed in a court having power to make such reversal, vacation or modification, setting forth the errors complained of, and thereupon a summons shall issue and be served, or publication made, as in the commencement of an action."

Section 9131 provides:

> "The plaintiff in error shall file with his petition a transcript of the proceedings containing the final judgment or order sought to be reversed, vacated or modified. No written or printed abstract or any copy of an abstract of the record shall be required in any case in the supreme court of this state."

Section 9132 provides:

> "Judges of county courts, justices of the peace and other judicial tribunals having no clerk, and clerks of every court of record, shall, upon request and being paid the lawful fees therefor, furnish an authenticated transcript of the proceedings, containing the judgment or final order of said courts, to either of the parties to the same, or to any person interested in procuring such transcript."

In *Sioux City & Pacific R. Co.* v. *Washington County*, 3 Neb. 30, two cases were determined, the first being an appeal from the decision of the board of county commissioners in

overruling the petition and motion of the railroad to set aside the action of the board increasing its assessment, the county board being then the assessing authority and the other a petition in error to the proceedings of said board covering the same assessment. The district court dismissed the appeal for want of jurisdiction and the petition in error was overruled, judgment being rendered sustaining the board of equalization. Petitions in error were filed in both cases in the Supreme Court. The judgment of the district court in the appeal was affirmed on the ground that an appeal from the decision of the board did not lie, that the decision of the county board was a final order and as such might be reviewed in the district court only upon petition in error. In the error proceeding the Supreme Court held that the county board had no right to increase an assesment without notice to the persons whose rights and interests are affected. The judgment of the district court was, therefore, reversed and the proceedings of the county commissioners vacated and set aside. Thus, full relief was granted to the petitioner in error. In the case of *McGee* v. *State*, 32 Neb. 149, *Sioux City & Pacific R. Co.* v. *Washington County, supra,* was approved.

In *State* v. *State Board of Equalization & Assessment*, 81 Neb. 139, which was an original application on the relation of the Union Pacific Railroad Company for a writ of mandamus to compel respondents as a state board of equalization and assessment to convene and make certain records, the court said (pp. 143-144):

> "It is insisted by the respondents, however, that neither appeal nor error will lie from the final action of the board in valuing and assessing railroad property for taxation. We can readily agree with the first part of this contention, for appeal is purely a statutory remedy, and where no provision therefor is made by law the right to pursue that remedy does not exist; but when

> we come to consider the question of the relator's right to prosecute error to a court of competent jurisdiction an entirely different rule prevails. By section 580 of the code it is provided 'A judgment rendered, or final order made, by a probate court, justice of the peace, or any other tribunal, board, or officer exercising judicial functions, and inferior in jurisdiction to the district court, may be reversed, vacated or modified by the district court.' It is further provided by sec. 581 of the code: 'An order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment, and an order affecting a substantial right made in a special proceeding, or upon a summary application in an action after judgment, is a final order which may be vacated, modified, or reversed, as provided in this title.'"

Section 580 referred to is the same as section 9127, Compiled Statutes of Nebraska for 1922, quoted above, except that the word "county" is now used. County courts are courts of probate in Nebraska and were formerly so designated.

Formerly there was no statute providing specifically for an error proceeding from the board of equalization and assessment. In 1921 the revenue law was modified and the following provision was added (part of Section 5901):

> "From any final decision of the state board of equalization and assessment, any person, county or municipality affected thereby may prosecute a writ of error to the supreme court and upon demand therefor the state board shall prepare and certify a transcript of its records and proceedings involved in such decision, upon payment by the party demanding the same of a fee of ten cents for each one hundred words. Notice of intention to obtain a review shall be filed within ten days from the date of the entry by the board, and when docketed said cause shall be given precedence by the supreme court over all civil cases."

This amendment was considered by the Supreme Court of Nebraska in the case of *The Chicago, Rock Island & Pacific Railway Co. v. State, cited supra.* The railway company objected to its 1923 assessment before the board of equalization and assessment. In conjunction with some of the other railroads operating in Nebraska it offered testimony and presented its arguments. This was in accordance with the practice before the state board for a number of years. It offered in evidence the record of the proceedings of the board in 1921 and 1922 (offered in this case as Exhibit 29, transcript pp. Tr. 89-271). On error to the Supreme Court it was reversed and remanded.

Under the decision in the Rock Island case it will be seen that there is a plain, adequate and complete remedy at law and that the appellant had no need of resorting to a proceeding in equity to sustain any of its rights. The essential parts of the decision are as follows:

> "This is a proceeding in error under section 5901, Comp. St. 1922, to review the assessment for taxation made by the state board of equalization and assessment of that part of its property and franchises required by law to be assessed by that body. The complainant alleged in its petition for a hearing before the state board that all property in the state other than railroad property has been valued for assessment purposes by the county authorities at not to exceed 50 per cent, of its actual value; that the law provides that the property of complainant be also valued on the same basis as used for the valuation of all other classes of property; that if the tentative assessed valuation of its property be not reduced to the same percentage of actual value as other property, or unless all other property be valued and assessed by increasing the value to the percentage at which the complainant's property has been assessed, complainant would be denied the equal protection of the law, and its property would be taken for public use without just compensation and without

due process of law. It alleges that the tentative assessment of $10,694,409, made on June 15, 1923, is in excess of the actual value of the complainant's property, which does not exceed $5,186,920, and that this valuation should be further equalized with the assessment of other property in the state. The complainant requested that the board either reduce the valuation of its property to the same percentage of actual value as other property, or that it increase the valuation of all classes of property in each county to the same percentage at which the complainant's property has been assessed. Other railroad companies filed similar complaints. A hearing was had and at its conclusion the board adhered to the tentative valuation.

"There was no assessment of real estate required under the statute in 1923. The 1922 assessment remains except for improvements placed upon the land within the tax year of 1922-1923.

(Extensive discussion of the testimony follows).

"If, however, as between two classes of taxpayers, the property of each is assessed at a lower value but at the same proportion of its actual value, there is no ground for complaint on the part of either. But if the property of one is valued at its actual value and that of another at only 68 per cent of its actual value, inequality results and an unjust and unlawful exaction is made. *State* v. *Osborn*, 60 Neb. 415.

"A number of decisions have been cited as to what elements should govern in the valuation of railroad property. There seems to be some conflict as to the proper rule to be adopted, especially with regard to valuation for rate making purposes. We believe, that, in reviewing the action of the board, we must consider only those elements of value, the existence of which rests upon the facts in evidence. We may not act upon mere conjecture or theory, which, though the theory may be sound, can only be apprehended by an explanation made by some witness conversant with the intricacies of railroad accounting. No such explanation

was made. The following methods of valuation are presented by the record. They do not possess all the elements or factors generally required by the courts, but they are all that were before the state board, and, since we are merely reviewing their action, we cannot consider any others.

"From a careful consideration of all the facts in evidence, we are of the opinion that the valuation of the property of complainant lacks reasonable uniformity with the assessment of lands and improvements; that, as the record recites, the railroad property has been assessed at 'full actual value,' and that the other class mentioned has been assessed at a much lower percentage. This being the case, the property of complainant should be revalued as nearly as possible at the same percentage of actual value as all other property.

"Having come to this conclusion, the finding and order of the state board of equalization and assessment of the value of complainant's property is set aside and the proceedings are remanded to that body for further proceeding in accordance with law. While section 5882, Comp. St. 1922, seems to apply specifically to where 'any tax or part thereof levied under the provisions of this article shall be adjudged illegal and nonenforceable, or shall be set aside by any court of competent jurisdiction on any ground whatever,' and specifies what the duty of the board shall be as to reassessing and redetermining the value in such case, the procedure prescribed for such cases seems to be well adapted to such a case as this, where the assessment of the property of the complainant has been decided to lack uniformity with that of other classes of property. We desire in this connection to call special attention to section 5842, Comp. St. 1922, which gives the board power to consider all facts and information not contained in the reports made by the railroad companies. Where such information is considered, the source from which it has been obtained should, so far as possible, be mentioned in the record, so that a reviewing court may consult the same sources and thus stand in the shoes of the assessing body."

The section of the statute 5882, referred to in the decision of the Supreme Court of Nebraska (under Art. 6 relating to equalization by local boards) is as follows:

> "If any tax or part thereof levied under the provisions of this article shall be adjudged illegal and nonenforceable, or shall be set aside by any court of competent jurisdiction on any ground whatever, it shall be the duty of the board, whether any part of the taxes assessed and levied have been paid or not, to forthwith reascertain and redetermine the value of the property of such company or companies, if the same shall be called for by such decision of the court; and, when such reassessment has been made, to make duplicates of the original assessment rolls with their valuations thereon, and return the same to the respective officers of the cities and counties as provided in the fifth next preceding section. Whereupon it shall be the duty of the city and county officers, respectively, to make a new computation and extend new levies of taxes against the company or companies affected by the order of the court, which taxes shall be of the same force and effect as an original assessment and levy made in accordance with law. The proceedings for such reassessment and for the extension and collection of taxes upon such duplicate assessment rolls shall be conducted in the method originally provided, as near as may be. The power is hereby given to reassess the property of any company as often as may be necessary until the amount of taxes legally and justly due from any company for any year have been finally and definitely determined under the provisions of this article. In case relevies shall be made, credit may be given thereon of any amounts paid upon the prior levy."

Thus not only is there a remedy in the Supreme Court for the aggrieved taxpayer, but the procedure to be followed after the Supreme Court has acted is also directed by the decision.

The Rock Island case disposes of the necessity of discussing the effect of *Lincoln Telephone & Telegraph Co.* v. *Johnson County*, 102 Neb. 254, and *Sioux City Bridge Co.* v. *Dakota*

County, 105 Neb. 834. The decision in the Rock Island case is in absolute harmony with the holding of this court in *Sioux City Bridge Co.* v. *Dakota County*, Advance Opinions (L. Ed. No. 7, p. 220, decided January 2, 1923. (It should be noted that the decision in the case of *Sioux City Bridge Co.* v. *Dakota County*, *supra*, was rendered on January 2, 1923, whereas the order dismissing plaintiff's bill was not entered until January 10, 1923.) The court directs the board, upon reassessment, to make its record so that the reviewing court may consult the same sources and thus stand in the shoes of the assessing body.

The decision in the Rock Island case disposes of the contentions of appellant in *Chicago &North Western R. R. Co.* v. *City of Albion*, 192 N. W. (Neb.) 233. In that case, which involved an assessment for special benefits, the railroad company appeared long after the proceeding had been instituted and after the testimony, on which the assessment was based, had been offered. The court states the facts as follows (p. 233):

> "The record shows that a notice was published to all property owners in the districts that the city council would sit in special session on October 21, 1918, at 8 o'clock p. m. for the purpose of fixing the valuation of the lots within paving districts Nos. 1, 2 and 3, and for the purpose of equalizing and distributing the costs of the improvement upon the property benefited 'according to law and the benefits derived therefrom.' The council met, took up the matter, and adjourned until October 24, 1919. A number of adjourned meetings were held, and finally on November 12, 1919, 'after arriving at a tentative agreement as to values and benefits, the clerk was instructed to embody the same in a schedule for further consideration at a future meeting.' An adjournment was taken to November 14. At that meeting the Chicago & Northwestern Railway Company appeared and requested the privilege of offering testimony in regard to the assessment of paving taxes on their property, and

> further asked the board to introduce the evidence upon which it based its findings in fixing the assessment, so that it might be preserved in a bill of exceptions. The council permitted the railway company to present whatever testimony it desired, but the request that the evidence leading to the findings of the board be incorporated in a bill of exceptions was refused."

Testimony offered by the company was received and the board then fixed the assessment. The court held that the board must be considered to have acted as appraiser of the benefits, acting upon information and upon their own knowledge of the property, and that the fact that the record did not set forth the evidence upon which the board acted would not render the assessment erroneous. The decision shows no reason for the long delay on the part of the railroad company, and it would certainly be more than could be expected to have the board retrace all of its steps and show on what evidence it acted. A litigant, who remains out of court until the trial of his case is nearly concluded, should not expect the court to retry the case for his benefit.

VII. The Jurisdiction of the Federal Court.

It is fundamental, of course, that if there is jurisdiction in the federal equity courts the law of a state cannot defeat such jurisdiction. The question here is whether or not, there being an adequate remedy under the state statutes, a Federal equity court, as controlled by the Federal law, has jurisdiction. We cite some of the cases decided by this court holding that wherever there is an adequate remedy at law, provided by the state statutes, Federal equity jurisdiction will not be exercised to restrain the collection of state taxes.

Dows v. *City of Chicago*, 11 Wall. 108 was a suit in the Circuit Court of the United States for the northern district of Illinois, carried on appeal to the Supreme Court of the United States. The court said (pp. 109-110):

"According to the view we take of this case, it is unnecessary to consider the force of any of the objections urged by the appellants to the decrees rendered. Assuming the tax to be illegal and void, we do not think any ground is presented by the bill justifying the interposition of a court of equity to enjoin its collection. The illegality of the tax and the threatened sale of the shares for its payment constitute of themselves alone no ground for such interposition. There must be some special circumstances attending a threatened injury of this kind, distinguishing it from a common trespass, and bringing the case under some recognized head of equity jurisdiction before the preventive remedy of injunction can be invoked. It is upon taxation that the several states chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible. Any delay in the proceedings of the officers, upon whom the duty is devolved of collecting the taxes, may derange the operations of government, and thereby cause serious detriment to the public.

"No court of equity will, therefore, allow its injunction to issue to restrain their action, except where it may be necessary to protect the rights of the citizen whose property is taxed, and he has no adequate remedy by the ordinary processes of the law. It must appear that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, or where the property is real estate, throw a cloud upon the title of the complainant, before the aid of a court of equity can be invoked."

In *Hannewinkle* v. *Georgetown*, 15 Wall. 547, *Dows* v. *Chicago* was affirmed. The case of *Mooers* v. *Smedley*, 6 Johnson's Chancery Reports 28, was approvingly cited by the court.

Mooers v. *Smedley*, *supra*, was a suit in injunction to prevent the payment of certain bounties. Chancellor Kent said (pp. 30-31):

"The act which has been cited (Laws N. Y. vol. 2, p. 137) gave the supervisors authority 'to examine, settle, and allow all accounts chargeable against the county, and to ascertain each town's proportion, and to add such further sum as any town should have voted to be raised for the destruction of noxious animals, and to cause all such sums to be raised and levied.' This power implied, and required the exercise of sound judgment, and the review and correction of all errors, mistakes, and abuses in the exercise of the powers of subordinate public jurisdictions, and in the official acts of public officers, belongs to the Supreme Court. In my opinion, it belongs exclusively to that court. It has, always, been a matter of legal, and never a matter of equitable, cognizance. This is not the case of a private trust, but the official act of a political body; and in the whole history of the English Court of Chancery, there is no instance of the assertion of such a jurisdiction as is now contended for. The superintending control, in these cases, has always been exercised in the Court of K. B., and nowhere else, and that court has proceeded by certiorari, mandamus, prohibition, information, etc. I have only to regret, that I cannot afford a remedy to the party aggrieved; but I am clearly of opinion, that I cannot uphold the injunction, and the motion must, consequently, be granted."

State Railroad Tax Cases, 92 U. S. 575, was an appeal from a decision granting an injunction against the collection of taxes, the decision was reversed and in speaking of the refusal of federal courts to interfere where there is an adequate remedy at law this court, speaking by Justice Miller, said (pp. 612-614):

"Let us suppose that the complaints made in these cases against the taxes were well founded; that the mode adopted by the board of equalization to ascertain the value of the franchise and capital stock is not the best mode; that it produces unequal and unjust results in some cases; that the same is true of the mode of ascertaining the basis of assessment for the taxation by municipalities; that the board of equalization increased

the entire assessment on each company without sufficient evidence; in short, let us suppose that in these and many other respects the proceedings were faulty and illegal,—does it follow that in every such case a court of equity will restrain the collection of the tax by injunction, or will enjoin the collection of the whole tax when it is obvious that in justice a large part of it should be paid, and if not paid, that the complainant escapes taxation altogether?

"We propose to consider these questions for a moment, because the immense weight of taxation rendered necessary by the debts of the United States, of the several states, and of the counties, cities, and towns, has resulted very naturally in a resort to every possible expedient to evade its force.

"It has been repeatedly decided that neither the mere illegality of the tax complained of, nor its injustice nor irregularity, of themselves, give the right to an injunction in a court of equity. *Mooers* v. *Smedley,* 6 Johns. Ch. 27; *Dodd* v. *Hartford,* 26 Conn. 239; *Green* v. *Munford,* 5 R. I. 478; *Messert* v. *Supervisors of Columbia,* 50 Barb. 190; *Dow* v. *Chicago,* 11 Wall. 108; *Hannewinkle* v. *Georgetown,* 15 Wall. 548.

"The government of the United States has provided, both in the customs and in the internal revenue, a complete system of corrective justice in regard to all taxes imposed by the general government, which in both branches is founded upon the idea of appeals within the executive departments. If the party aggrieved does not obtain satisfaction in this mode, there are provisions for recovering the tax after it has been paid, by suit against the collecting officer. But there is no place in this system for an application to a court of justice until after the money is paid.

"That there might be no misunderstanding of the universality of this principle, it was expressly enacted, in 1867, that 'no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.' Rev. Stat. Sec. 3224. And though this was intended to apply alone to taxes levied by the United States, it shows the sense of congress of the evils

to be feared if courts of justice could, in any case, interfere with the process of collecting the taxes on which the government depends for its continued existence. It is a wise policy. It is founded in the simple philosophy derived from the experience of ages, that the payment of taxes has to be enforced by summary and stringent means against a reluctant and often adverse sentiment; and to do this successfully, other instrumentalities and other modes of procedure are necessary, than those which belong to courts of justice. See *Cheatham* v. *Norvell*, decided at this term; *Nickoll* v. *United States*, 7 Wall. 122; *Dow* v. *Chicago*, 11 Wall. 108.

"In this latter case, this court, after commenting upon the necessary reliance of the state governments upon the prompt collection of the taxes for their support and maintenance, and the ill consequences of interference with their proceedings in that matter, says, 'No court of equity will, therefore, allow its injunction to issue to restrain their action, except where it may be necessary to protect the citizen whose property is taxed, and he has no adequate remedy by the ordinary processes of the law. It must appear that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, or, when the property is real estate, throw a cloud upon the title of complainant before the aid of a court of equity can be invoked.' So, in the case of *Hannewinkle* v. *Georgetown*, the court says, 'It has been the settled law of this country for a great many years, that an injunction bill to restrain the collection of a tax on the sole ground of the illegality of the tax cannot be maintained. There must be an allegation of fraud, that it creates a cloud upon the title, that there is apprehension of a multiplicity of suits, or some cause presenting a case of equity jurisdiction.' 15 Wall. 548. We do not propose to lay down in these cases any absolute limitation of the powers of a court of equity in restraining the collection of illegal taxes; but we may say, that, in addition to illegality, hardship, or irregularity, the case must be brought within some of the recognized foundations of equitable jurisdiction, and that mere errors or excess in valuation, or hardship or injustice of

the law, or any grievance which can be remedied by a suit at law, either before or after payment of taxes, will not justify a court of equity to interpose by injunction to stay collection of a tax."

In *Pittsburgh etc. Ry.* v. *Board of Public Works of West Virginia,* 172 U. S. 32, the Pittsburg etc. Railway, an Ohio corporation, owning and operating a railway running through the state of West Virginia and other states, and owning and using a bridge across the Ohio river, filed its bill in equity in the Federal Circuit Court, District of West Virginia, against the board of public works of the state of West Virginia and its members and against a local sheriff to restrain the assessment and collection of taxes upon the bridge under Section 67, Chap. 29 of the Code of that state. The bill alleged that by that section of the Code, plaintiff was required to make return in writing, under oath, to the auditor of state, each year, of its property subject to taxation in the state. The auditor was required to present the return to the board of public works which was authorized either to approve the return or to proceed to assess the fair cash value of all property of the railroad company which it was so required to return for taxation. And it was further provided that as soon as possible after the value of any railroad property was fixed for purpose of taxation by one of the several methods designated by that section, the auditor should assess and charge such property with the taxes properly chargeable thereon.

The bill also described a portion of the location of the railway; that the bridge across the Ohio was a part of its railway, giving measurements; that the plaintiff had made the return as required by law.

The bill also alleged that the board of public works refused to approve plaintiff's return, and proceeded to asses the plaintiff with certain main track and certain second

track, which assessment and valuation covered the entire line of its railroad in the state of West Virginia, including so much of the bridge as lay within the state; and in addition thereto valued and assessed the bridge as a separate structure at the sum of $200,000, placing the tax thereon at $3060, thereby assessing the plaintiff with the entire length of the bridge in West Virginia as a part of its railway in the state and also assessing it with the bridge as a separate structure, thus taxing the plaintiff a second time for that part of its bridge which lay in West Virginia; whereas, the bridge should only have been assessed as so many feet of the railway. The plaintiff also alleged facts concerning lack of notice to the plaintiff of the assessment, payment of a portion of its tax and a refusal to pay the $3060, that thereafter the auditor added 10% to that sum to pay the expense of collection and certified the same to the sheriff for collection; that the sheriff was threatening to collect the same by legal process and thus would inflict irreparable injury upon plaintiff unless enjoined.

The plaintiff alleged that the property was used in conducting inter-state commerce, that the tax was illegal and unjust and constituted a cloud upon the title to the property, and prayed for an injunction to prevent collection. The bill was dismissed on demurrer. The decision was affirmed because the plaintiff had not availed itself of the adequate remedies provided by the statute of the state.

In its decision this court said (37):

> "The collection of taxes assessed under the authority of a State is not to be restrained by writ of injunction from a court of the United States, unless it clearly appears, not only that the tax is illegal, but that the owner of the property taxed has no adequate remedy by the ordinary processes of the law, and that there are special circumstances bringing the case under some recognized head of equity jurisdiction. *Dows* v. C[illegible]

cago, 11 Wall. 108; *Hannewinkle* v. *Georgetown*, 15 Wall, 547; *State Railroad Tax cases*, 92 U. S. 575; *Union Pacific Railway* v. *Cheyenne*, 113 U. S. 516; *Milwaukee* v. *Koeffler*, 116 U. S. 219; *Shelton* v. *Platt*, 139 U. S. 591."

After discussing the cases cited, the court continued (44):

"The same section further provides that the decision made by the board of public works shall be final, unless the railroad company, within thirty days after such decision comes to its knowledge, appeals (which it is expressly authorized by the statute to do) from the decision as to the assessment and valuation made in each county through which the railroad runs, to the circuit court of that county. The appeal is to have precedence over all other cases, and is to be tried as soon as possible after it is entered. That court, on such appeal, is to hear all legal evidence offered by the appellant, or by the state, county, district or municipal corporation, and if satisfied that the valuation as fixed by the board of public works is correct, to confirm the same; but, if satisfied that such valuation is too high or too low, to correct it, and to ascertain and fix the true value of the property according to the facts proved, and certify such value to the auditor.

"This provision for a review and correction, by the circuit court of the county, of the assessment made by the board of public works affords a convenient and adequate remedy for any error in the taxation, and has been held by the highest court of the State to be in accordance with its constitution. (Citing case).

"That court has often had occasion to inquire how far the action of the circuit court of the county, in this respect, is administrative only, and how far it may be considered as judicial in its nature. (Citing cases).

"But it is not important, in this case, to pursue that course of inquiry; since, in matters of taxation, it is sufficient that the party assessed should have an opportunity to be heard, either before a judicial tribunal,

or before a board of assessment, at some stage of the proceedings."

Shelton v. *Platt,* 139 U. S. 591, was an action to enjoin the collection of a license tax upon an express company under a statute of the state of Tennessee. The circuit court granted an injunction but the case was reversed in this court, which said (594):

"It was ruled in *Dows* v. *Chicago,* 11 Wall. 108, 112, that a suit in equity will not lie to restrain the collection of a tax on the sole ground that the tax is illegal, but that there must exist, in addition, special circumstances bringing the case under some recognized head of equity jurisdiction, such as that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, or, where the property is real estate, throw a cloud upon the title of the complainant. And Mr. Justice Field, speaking for the court, said: 'The equitable powers of the court can only be invoked by the presentation of a case of equitable cognizance. There can be no such case, at least in the Federal courts, where there is a plain and adequate remedy at law. And except where the special circumstances which we have mentioned exist, the party of whom an illegal tax is collected has ordinarily ample remedy, either by action against the officer making the collection or the body to whom the tax is paid. Here such remedy existed. If the tax was illegal, the plaintiff protesting against its enforcement might have had his action, after it was paid, against the officer or the city to recover back the money, or he might have prosecuted either for his damages. No irreparable injury would have followed to him from its collection. Nor would he have been compelled to resort to a multiplicity of suits to determine his rights. His entire claim might have been embraced in a single action. We see no ground for the interposition of a court of equity which would not equally justify such interference in any case of threatened invasion of real or personal property.'"

In *Allen* v. *Pullman's Palace Car Co.* 139 U. S. 658, suit was instituted in the Circuit Court of the United States for the Middle District of Tennessee against the comptroller of that state for an injunction to restrain him from the collection of certain license fees. An injunction was granted by the Circuit Court, which was reversed in the Supreme Court principally upon the authority of *Shelton* v. *Platt*, 139 U. S. 591.

In *Indiana Mfg. Co.* v. *Koehne*, 188 U. S. 681, a bill was filed in the circuit court of the United States for the district of Indiana, to enjoin the collection of certain taxes. The bill was there dismissed. On appeal to this court, the dismissal was affirmed, and the court said (p. 684):

> "The foundation of this appeal to equity, as averred by complainant, was (1) on the ground that the assessment constitutes a cloud upon title; (2) that there is no adequate remedy at law; (3) that a multiplicity of suits is avoided; and (4) that it prevents irreparable injury to complainant.
>
> "It has long been the settled doctrine of the federal courts that the mere illegality of a tax, or the mere fact that a law upon which the tax is founded is unconstitutional, does not entitle a party to relief by injunction against proceedings under the law, but it must appear that the party has no adequate remedy by the ordinary processes of the law, or that the case falls under some other recognized head of equity jurisdiction, such as multiplicity of suits, irreparable injury, etc. See *Cruickshank*, v. *Bidwell*, 176 U. S. 73, 80, where many of the authorities upon this subject are collected in the opinion which was delivered by Mr. Chief Justice Fuller. See also *Pittsburgh, etc., Railway* v. *Board of Public Works*, 172 U. S. 32, where Mr. Justice Gray dealt with the subject quite fully. We must judge the case at bar under the rules laid down by the authorities cited."

The court then discussed the several grounds alleged. The plaintiff owned no real estate and consequently there could be no cloud upon title. The statute authorized suit for the repayment of taxes illegally collected, and that was determined to be an adequate remedy. Upon the ground that the action would prevent a multiplicity of suits, this court said (p. 689):

> "The remedy provided by the state of Indiana is in truth but one proceeding, and all the complainant had to do in order to avail itself of such remedy was to appear before the board of review when the assessment was first made and object to it, and if its objections were overruled, then to appeal to the state board, and if that board also overruled the objection, then to pay the tax. The proceeding thereafter is one suit commenced by application to the board of county commissioners to recover the tax wrongfully assessed, and if the claim were refused, then the party might go into the circuit court, and if refused again, it had the further right of appeal, and if still refused, it then had the right of review by writ of error from this court, if any Federal question had been decided against it. The right to come into a Federal court and invoke its equitable jurisdiction in order to avoid the remedy thus provided by the state cannot, under these facts, be founded upon the alleged prevention of a multiplicity of suits. The claim on such ground is without foundation."

In answer to the claim that irreparable injury was threatened, it was said (p. 690):

> "There is a general averment that to enforce the tax by distraint and sale of complainant's property would result in irreparable injury, but there is no fact stated from which it could be inferred that irreparable injury would be likely to result from such enforcement, and where a plain and adequate remedy to recover the amount is given by statute no such irreparable injury can be inferred."

Singer Sewing Mach. Co. v. *Benedict*, 229 U. S. 481, was an action by a New Jersey corporation to enjoin the col-

lection of taxes in the city and county of Denver. The case was instituted in the Federal District Court where it was dismissed, the Circuit Court of Appeals affirmed the decision and the case was brought to this court on appeal. In its decision of affirmance this court used the following language (pp. 484-485):

"In the courts of the United States it is a guiding rule that a bill in equity does not lie in any case where a plain, adequate and complete remedy may be had at law. The statute so declares, Rev. Stat., Sec. 723, and the decisions enforcing it are without number. If it be quite obvious that there is such a remedy, it is the duty of the court to interpose the objection sua sponte, and in other cases it is treated as waived if not presented by the defendant in *limine*. *Reynes* v. *Dumont*, 130 U. S. 354, 395; *Allen* v. *Pullman's Palace Car Co.*, 139 U. S. 658. There was no waiver here. The objection was made by the demurrer and again by the answer, and so, if it was well grounded, it was as available to the defendants in the Circuit Court of Appeals to prevent a decree against them there as it was in the Circuit Court. *Boise Artesian Water Co.* v. *Boise City*, 213 U. S. 276.

"In the last case it was said of the pertinency of the guiding rule in cases such as this (p. 281): 'A notable application of the rule in the courts of the United States has been to cases where a demand has been made to enjoin the collection of taxes or other impositions made by state authority, upon the ground that they are illegal or unconstitutional. The decisions of the state courts in cases of this kind are in conflict, and we need not examine them. It is a mere matter of choice of convenient remedy for a state to permit its courts to enjoin the collection of a state tax, because it is illegal or unconstitutional. Very different considerations arise where courts of a different, though paramount, sovereignty interpose in the same manner and for the same reasons. An examination of the decisions of this court shows that a proper reluctance to interfere by pre-

vention with the fiscal operations of the state governments has caused it to refrain from so doing in all cases where the Federal rights of the persons could otherwise be preserved unimpaired. It has been held uniformly that the illegality or unconstitutionality of a state or municipal tax or imposition is not of itself a ground for equitable relief in the courts of the United States. In such a case the aggrieved party is left to his remedy at law, when that remedy is as complete, practicable and efficient as the remedy in equity.'"

And further (p. 486-487):

"We refer to these cases, not as defining the jurisdiction in equity of the Circuit Court, for that they could not do (*Payne* v. *Hook*, 7 Wall. 425, 430; *Whitehead* v. *Shattuck*, 138 U. S. 146; *Smythe* v. *Ames*, 169 U. S. 466, 516), but as showing that the Colorado statute gave to one who should pay illegal taxes a right to recover back from the county the money so paid. This right was one which could be enforced by an action at law in the Circuit Court, no less than in the state courts, if the elements of Federal jurisdiction, such as diverse citizenship and the requisite amount in controversy, were present. *Ex parte McNiel*, 13 Wall. 236, 243; *United States Mining Co.* v. *Lawson*, 134 Fed. Rep. 769, 771. Thus it will be perceived that, if the taxes in question were illegal and void, as asserted, the company had a remedy at law. It could pay them and, if the commissioners refused to refund, have its action against the county to recover back the money. Such a remedy, as this court often has held, is plain, adequate and complete in the sense of the guiding rule before named, unless there be special circumstances showing the contrary. *Dows* v. *Chicago*, 11 Wall. 108, 112; *State Railroad Tax Cases*, 92 U. S. 575, 613-614; *Shelton* v. *Platt*, 139 U. S. 591, 597; *Allen* v. *Pullman's Palace Car Co.*, Id 658, 661; *Indiana Manufacturing Co.* v. *Koehne*, 188 U. S. 681, 686."

Keokuk & Hamilton Bridge Co. v. *Salm*, 258 U. S. 122, was an appeal from the district court of the United States for

the southern district of Illinois, to review a decree of dismissal in a suit to enjoin the collection of a tax. The Keokuk & Hamilton Bridge Company, an Illinois corporation, owns a bridge across the Mississippi River, that part of which, lying within the state of Illinois, was assessed by the county assessors for purposes of taxation as real estate. The bill alleged that the property was deliberately assessed at 150 per cent of its actual value, whereas the property of other corporations and individuals was assessed at only 40 per cent of its value. A motion to dismiss was sustained by the district court, on the ground that the complainant had a plain, adequate and complete remedy at law. On appeal to this court it was said (p. 124) in affirming the decision:

> "But the bill failed to show that plaintiff was being deprived of property without due process of law, or was being denied equal protection of the laws, or that there was any danger that it would be. Compare *Wells, F. & Co. v. Nevada*, 248 U. S. 165, 168, 63 L. Ed. 190, 192, 39 Sup. Ct. Rep. 62. The law of Illinois affords ample opportunity to question the amount and the validity of an assessment, both before administrative tribunals and in its courts."

And further (125):

> "Here the alleged invalidity consists wholly in discriminatory over-valuation; and, so far as appears, appellant did not even apply to the board of review to correct the assessment. There is thus no basis for the contention that resort to a suit such as this was necessary to prevent either a sale for an illegal tax creating a cloud upon title, or multiplicity of suits to recover back the tax, or other irreparable injury."

In connection with *Keokuk & Hamilton Bridge Company* v. *Salm*, we refer to the case of *Wilson et al.* v. *Illinois Southern Railway Company et al.*, decided January 14, 1924, Ad. Op. L. Ed. Nos. 6 and 7, p. 225 by this Court. The court distin-

guished the two cases. In the former, the taxes of a single county were involved; in the latter, those of five counties were involved. Five suits at law would have been necessary, and in addition, "there would be insuperable difficulty in determining what the proper assessment against the whole road should be and in apportioning the due share to the county concerned."

In the present case no such difficulty can arise. One suit, and that expeditious and inexpensive, would determine every issue for all of the seventy-two counties interested. This case is fully within the principles enunciated in the Salm case.

This Court also referred to the provision of the new Illinois statute for an appeal from the state tax commission to the state Supreme Court and said, "How far such an appeal would be adequate upon a charge of fraud against the Commission may be doubted, and the adequacy of a remedy at law must be clear."

The section of the statute referred to is as follows (Sec. 115, Chap. 120, Cahill's Ill. Revised Statutes, 1921):

> "Any person feeling himself aggrieved by any assessment made by the tax commission may appeal to the Circuit Court of the County in which such property or some part thereof is situated, for the purpose of having the lawfulness of such assessment inquired into and determined.
>
> "The person taking such appeal shall file with the tax commission written notice of such appeal, which notice shall state in full the grounds of such appeal. Such notice of appeal shall be filed within ten days after such assessment is made and notice given thereof. Thereupon the tax commission shall prepare and transmit to the clerk of the court to which such appeal is taken a copy of such notice of appeal, and a copy of all evidence, documents, papers, books and files pertaining to such appeal, which copies shall be certified to as correct by the Director of

> Finance. The appeal shall be heard without formal pleadings upon the record so certified by the tax commission. Appeals shall lie from the judgment of the Circuit Court to the Supreme Court. The remedy by appeal herein provided for shall not be construed to be exclusive."

Two causes render the Illinois statute ineffective. First: The remedy provided is not exclusive. Under the decisions it is established in Illinois that an injunction may be granted when a tax is not authorized by law, when it is assessed upon property not subject to taxation, and when property has been fraudulently assessed too high.

> *Mich. Central Railroad Co.* v. *Carr*, 303 Ill. 354.
> *Sanitary Dist.* v. *Young*, 285 Ill. 351.
> *The Peoples Gas Light Co.* v. *Stuckart*, 286 Ill. 164.

As injunction is a proper remedy and as the statute still recognizes it as such a litigant may institute his suit as well in Federal court as in a state court. There is no remedy by injunction in such cases in Nebraska.

Second: No power to entertain such an appeal is vested in the Supreme Court of Illinois under the Constitution of that state. The Constitution provides (Sec. 1, Art. 9), in part, as follows:

> "The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise * * *."

In *The Public Life Insurance Co.* v. *Pollak*, 75 Ill. 292, it is said, in considering the constitutional provision above quoted (p. 294):

"Thus it will be seen that all power to fix a valuation is taken from each of the departments of the government. It is unmistakably vested in the persons elected under the requirements of the statute, and it can only be fixed by them, and not otherwise. The legislative branch of government could not exercise this power, nor could the executive, because the constitution has not only vested it in the persons elected, as directed by the general assembly, but all other persons, bodies, departments, or such bodies combined, are expressly prohibited from performing that duty.

"Nor is there any power, expressed or implied, by which the courts can fix a valuation, or review the action of the assessors. They are invested with the sole power, and we are aware of no authority to review their action. The law has not, nor can it, in view of this constitutional provision, empowered the courts to fix the valuation of property for taxation.

The Burton Stock Car Co. v. *Traeger*, 187 Ill. 9.
The People v. *Millard*, 307 Ill. 556.

The record in this case shows that there was an extensive hearing before the state board on complaint filed by appellant (Tr. pp. 89-271).

The decision in *Chicago, Rock Island & Pacific Railway Company* v. *State, supra*, disposes of all other criticisms by appellant in connection with *Keokuk & Hamilton Bridge Co.* v. *Salm, supra.*

The following cases also illustrate the principles applicable when an adequate remedy is provided by the state:

Milwaukee v. *Koeffler*, 116 U. S. 219.
Burrill v. *Locomobile Co.*, 258 U. S. 34.
Pullman Co. v. *Tamble*, 173 Fed. 200.
McLaughlin v. *St. Louis R. Co.*, 232 Fed. 579.
McDougal v. *Mudge*, 233 Fed. 235.

Missouri P. R. Co. v. *Conway, et al.*, 280 Fed. 401.
Long v. *Norman*, 289 Fed. 5.

VIII. Section 266 of the Judicial Code.

Section 266 of the federal judicial code is in part as follows:

> "It is further provided that if before the final hearing of such application a suit shall have been brought in a court of the state having jurisdiction thereof under the laws of such state, to enforce such statute or order, accompanied by a stay in such state court of proceedings under such statute or order pending the determination of such suit by such state court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the state. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the state, that the suit in the state courts is not being prosecuted with diligence and good faith."

Under the laws of Nebraska, taxes are not collected by suit. Delinquent corporation taxes may be collected from any agent holding money of the corporation by summary process, or taxes may be collected by sale of property.

The equity jurisdiction of the Federal courts is uniform throughout the Union, and if its processes may be stayed by the institution of a suit in a state court in some of the states, it would appear that it would be just to conclude that an error proceeding providing a remedy in advance would be regarded at least as favorably as a suit to enforce collection. This view is strengthened by the fact that courts of equity will adopt remedies provided by state statutes if consistent with equitable principles. No stay of proceedings can be involved in the error proceeding as the cases would have been finally determined long before the statutory liens attached.

The error proceeding appears to meet all that congress intended to require.

Dawson v. *Kentucky Dist. Co.*, 255 U. S. 288.

IX. Authorities of Appellant Discussed.

Appellant alleges that equity jurisdiction exists in this case in order to avoid a cloud upon the title to its property, to prevent a multiplicity of suits and irreparable injury. Appellant might have availed itself of the remedy provided in section 5901, Comp. St. 1922, immediately after its property was assessed, on May 1, 1922. If the petition in error had been promptly filed the case would probably have been disposed of in the Supreme Court of the state of Nebraska, before the date of the levy of taxes in July; at any rate, long before the time that the lien would have attached. The statutory remedy by petition in error would not only have avoided all other suits, but would have also obviated the necessity of bringing in the county officers, made parties in this suit. One suit would have disposed of the entire case. There are general allegations as to the irreparable injury, but, if the statutory remedy had been followed, there could have been no injury. The entire argument of appellant proceeds upon the theory that it was injured because there was no remedy. It failed to pursue the remedy under the statute which is not only plain, adequate and complete but is also highly expeditious. The Federal district court was fully justified in determining that the remedy under the state statute was sufficient.

A few of the cases cited by appellant will now be referred to:

Raymond v. *Chicago Traction Co.*, 207 U. S. 20, originated in the Circuit Court of the United States for the northern district of Illinois, where an injunction was granted against certain tax assessment. Upon appeal to this court the decree was affirmed. The assessment was made by the state board

of equalization, but from the decision of the board there was no appeal and such decision was conclusive except as relief might be had by injunction. This court said (p. 38):

> "Undoubtedly if there be a complete and adequate remedy at law in such a case as this, the remedy in equity will not be recognized. Assuming the tax to be void, equity will not restrain by injunction its collection, unless there be some other ground for equitable interposition."

In *Cummings* v. *Bank*, 101 U. S. 153, cited by appellant, the statute of Ohio especially provided injunction as a remedy for taxes illegally assessed. No such remedy exists in Nebraska for excessive assessment.

Section 6018, Compiled Statutes of Nebraska, 1922, provides:

> "No injunction shall be granted by any court or judge in this state to restrain the collection of any tax or any part thereof, hereinafter levied, nor to restrain the sale of any property for the non-payment of any such tax, except such tax or the part thereof enjoined be levied or assessed for any illegal or unauthorized purpose * * *."

The statutes afford a plain, adequate and complete remedy to one whose property is excessively valued for taxation and no suit for injunction will lie by reason of such assessment.

Western Union Tel. Co. v. *Douglas Co.*, 76 Neb. 666.
Hahn System v. *Stroud*, (Neb.) 190 N. W. Rep. 572.

Greene v. *Louisville & Interurban Ry. Co.*, 244 U. S. 499, was an action instituted in the District Court of the United States for the Eastern District of Kentucky to enjoin certain taxes. The court held that the statute of Kentucky did not give an adequate remedy. The court said (p. 520):

> "But, by a line of recent decisions in the Kentucky court of appeals, the effect of this section has been

confined to cases where the taxes paid either were wholly without warrant in law or were based upon a mistake as to the rate of taxation upon the amount assessed; and it has been held not to authorize the auditor to correct erroneous assessments, since that official is not intrusted with authority to make assessments."

In *Louisville & Nashville R. Co.* v. *Green*, 244 U. S. 522, and *Illinois Central R. Co.* v. *Greene*, 244 U. S. 555, the court held that the remedy provided by the Kentucky statute referred to in *Greene* v. *Louisville & Interurban Ry. Co.*, *supra*, was inadequate.

Smythe v. *Ames*, 169 U. S. 466, cited by appellant, decided that the provision of the Nebraska statute providing for an action did not prevent jurisdiction of the Federal courts. The court referred (644) to section 5 of chapter 72, article 12, of the Statutes of Nebraska for 1893 as not affording an adequate remedy. The provision was in part as follows:

> "Whenever any railroad company or companies in this state shall, in a proper action show by competent testimony that the schedule of rates prescribed by this act are unjust and unreasonable, such railroad or railroads shall be exempt therefrom as hereinafter provided. All such actions shall be brought before the supreme court, in the name of the railroad company or companies bringing the same, and against the state of Nebraska, and upon the hearing thereof, if the court shall become satisfied that the rates herein prescribed are unjust in so far as they relate to the railroad bringing the action, may issue their order directing the board of transportation to permit such railroad to raise its rates to any sum in the discretion of the board; Provided, That in no case shall the rates so raised be fixed at a higher sum than that charged by such railroad on the first day of January, 1893."

It will be observed the statute was an attempt to confer legislative power upon the court and that it went so far as

to limit the board of transportation to rates in force upon a specified date.

Union Pacific R. R. Co. v. *Board of County Commissioners of Weld County, Colorado, et al.*, 247 U. S. 282, was a suit by the Union Pacific Railroad Company to enjoin the collection of a portion of the taxes levied on its property in Weld County, Colorado, the complaint being that the company's property was assessed at one-third of its value, while most of the other property was assessed at one-fifth, and some not at all, and that this operated to place an undue burden of taxation on the company in violation of the constitution and laws of the state and contrary to the due process and equality clauses of the Fourteenth Amendment. A portion of the tax was conceded to be valid and was paid. An application for temporary injunction was denied by the district court and that interlocutory order was affirmed by the circuit court of appeals upon the ground that there was a plain, adequate, and complete remedy at law. The case, however, was not dismissed. An appeal to the Supreme Court of the United States was attempted, but dismissed and the matter was determined on petition for certiorari. For many years the revenue laws of Colorado contained this provision (p. 284):

> "* * * and in all cases where any person shall pay any tax, interest or costs, or any portion thereof, that shall thereafter be found to be erroneous or illegal, whether the same be owing to erroneous assessment, to improper or irregular levying of the tax, or clerical or other errors or irregularities, the board of county commissioners shall refund the same without abatement or discount to the taxpayer."

This court, in discussing the statute, said (p. 285):

> "If that section is still in force, unqualified and unmodified, the conclusion below that in this case there is a plain, adequate and complete remedy at law, and there-

fore that relief by injunction is not admissible, is fully sustained by our decisions. *Singer Sewing Machine Co.* v. *Benedict*, 229, U. S. 481, and cases there cited; *Pittsburg, etc. Ry. Co.* v. *Board of Public Works*, 172 U. S. 32; *Arkansas Building & Loan Assn.* v. *Madden*, 175 U. S. 269; *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20, 38; *Johnson* v. *Wells, Fargo & Co.*, 239 U. S. 234, 243; *Greene* v. *Louisville & Interurban R. R. Co.*, 244 U. S. 499, 519.

"That the taxes were levied for state, school district and town, as well as for county, purposes is not material; for it is apparent from the Colorado statutes and decisions that the section covers broadly the whole of the tax that is found to have been erroneous or illegal, regardless of the purpose for which it was levied and placed on the county tax roll. And it also is immaterial that the taxes were made a lien on the company's real property, for the lien would be effectually removed by paying them and suing to recover back the money. *Allen* v. *Pullman's Palace Car Co.*, 139 U. S. 658, 661; *Arkansas Building & Loan Assn.* v. *Madden, supra*, 273.

"Whether the section named is still in force, unqualified and unmodified, is the important question."

The court, after discussing certain amendments, continued (p. 287):

"An examination of the new statute shows that the controversy just outlined is not without some real basis and that its solution is not free from difficulty. The question is purely one of state law, and, so far as we are advised, the supreme court of the state has not passed on or considered it. A ruling by us on the question would neither settle it for that court nor be binding in an action to recover the tax if paid. In these circumstances it cannot be said that the company certainly or plainly has an adequate and complete remedy at law. On the contrary, the existence of such a remedy is debatable and uncertain. And this being so, the situation is not one in which cognizance of the present suit properly can be declined."

Wallace v. *Hines*, 253 U. S. 66. In that case this court said:

> "As the tax is made a first lien upon all the property of the plaintiff railroads in the state, and thus puts a cloud upon their title, and as delay in payment is visited with considerable penalties, there is jurisdiction in equity unless there is an adequate remedy at law against the state to which the tax is to be paid. (Citing cases.) The only ground for supposing that there is such a remedy is a provision that 'an action respecting the title to property, or arising upon contract, may be brought in the district court against the state the same as against a private person.' N. D. Comp. Laws 1913, Sec. 8175. This case does not arise upon contract except in the purely artificial sense that some claims for money alleged to have been obtained wrongfully might have been enforced at common law by an action of assumpsit. Nothing could be more remote from an actual contract than the wrongful extortion of money by threats, and we ought not to leave the plaintiffs to a speculation upon what the state court might say if an action at law were brought." (Citing cases.)

Shaffer v. *Carter*, 252 U. S. 37:

In that case the jurisdiction in equity was sustained because there was no showing that there was an adequate remedy at law. This court said (pp. 46,47):

> "As ground for resorting to equity, the bill alleges that plaintiff is the owner of various oil and gas mining leases covering lands in Creek County, Oklahoma, and that the lien asserted thereon by virtue of the levy and tax warrant creates a cloud upon his title. This entitles him to bring suit in equity. (Citing cases.) Unless the contention that he has a plain, adequate, and complete remedy at law be well founded."

The statute is then discussed and the court concluded:

> "It (the statute) falls short of indicating—to say nothing of plainly showing—that this procedure would

afford an adequate remedy to a party contending that the Income Tax Law itself was repugnant to the Constitution of the United States."

Stanley v. *Supervisors of Albany County*, 121 U. S. 535, was an action in which the plaintiff recovered a judgment at law against the board of supervisors of Albany County, New York, for taxes exacted and paid, under legal process, on shares of the stock of the National Albany Exchange Bank (See *Supervisors* v. *Stanley*, 101 U. S. 305).

This court reversed the case, and upon a new trial judgment was given for Stanley upon one count and judgment went against him on the other counts. The case was again brought to this court and the judgment was affirmed. In the course of the discussion this court said (p. 550):

"In nearly all the states, probably in all of them, provision is made by law for the correction of errors and irregularities of assessors in the assessment of property for the purposes of taxation. This is generally through boards of revision or equalization, as they are often termed, with sometimes a right of appeal from their decision to the courts of law. They are established to carry into effect the general rule of equality and uniformity of taxation required by constitutional or statutory provisions. Absolute equality and uniformity are seldom, if ever, attainable. The diversity of human judgments, and the uncertainty attending all human evidence, preclude the possibility of this attainment. Intelligent men differ as to the value of even the most common objects before them—of animals, houses, and lands in constant use. The most that can be expected from wise legislation is an approximation to this desirable end; and the requirement of equality and uniformity found in the constitutions of some states is complied with when designed and manifest departures from the rule are avoided.

"To these boards of revision, by whatever name they may be called, the citizen must apply for relief against

> excessive and irregular taxation, where the assessing officers have jurisdiction to assess the property. Their action is judicial in its character. They pass judgment on the value of the property upon personal examination and evidence respecting it. Their action being judicial, their judgments in cases within their jurisdiction are not open to collateral attack. If not corrected by some of the modes pointed out by statute, they are conclusive, whatever errors may have been committed in the assessment. As said in one of the cases cited, the money collected on such assessment cannot be recovered back in an action at law, any more than money collected on an erroneous judgment of a court of competent jurisdiction before it is reversed."

The appellants insist that under *Lincoln Telegraph & Telephone Co.* v. *Johnson County, supra,* and *Sioux City Bridge Co.* v. *Dakota County, supra,* they had no remedy. Appellants say (brief p. 68):

> "But such was the law of Nebraska at the time of the decision of this case by the court below, and such is still the law in that state, except as its courts may be morally bound to hereafter follow the decision of the Sioux City bridge case."

Appellants have inadvertently misstated the fact as to the time of the decision. The decision in the *Sioux City Bridge Co. Case* was rendered in this court on January 2, 1923, whereas the decisions in these cases were not rendered until January 10, 1923. The statement that the courts of Nebraska are only morally bound by the decisions of this court is most astounding. The judges of the courts of Nebraska are not only morally but also legally bound by the oath required of them to support the Constitution of the United States; that means, of course, as interpreted by this court. The Supreme Court of Nebraska implicitly followed the holding of this court in the Sioux City Bridge case in the case of *Chicago, R. I. & P. R. Co.* v. *State, supra.*

X. CONCLUSION.

Under the Statutes of Nebraska, as interpreted by the Supreme Court of the state, there is afforded a plain, expeditious, adequate and complete remedy at law to the tax-payer feeling aggrieved. Such remedy avoids a multiplicity of suits, prevents injury and likewise prevents any lien attaching to the property, or in any event holds the enforcement of such lien in abeyance until the procedure under the statute is fully completed. More than that, it is more favorable to the tax-payer than a suit in equity, because being a direct proceeding relief is afforded if the decision of the state board be manifestly wrong, or if there be lack of reasonable uniformity in the assessment of different classes of property, whereas equity will not act unless fraud either actual or constructive is shown.

Under the repeated decisions of this court and cited above the remedy provided by the laws of Nebraska is plain, adequate and complete.

Appellees earnestly ask that the decisions of the district court be affirmed.

Respectfully submitted,

O. S. SPILLMAN, Attorney General of Nebraska,
GEORGE W. AYRES, Assistant Attorney General,
HUGH LAMASTER, Assistant Attorney General,
Solicitors for Appellees.

APPENDIX.

OPINION OF THE SUPREME COURT OF NEBRASKA

(Filed December 31, 1923).

IN RE EQUALIZATION OF PROPERTY OF C. R. I. & P. R. CO.

CHICAGO, R. I. & P. R. CO.

v.

STATE.

Number 23693.

1. While the Constitution, section, Art. VIII, requires that "taxes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises," and the statute, section 5820, Comp. St. 1922, requires that all property be assessed at its actual value, an assessment will not be set aside merely because all property has not been assessed at its actual value, provided that the assessment has been made with reasonable uniformity and proportion upon all classes of property.

2. The exclusion by the assessing authorities of "labor costs" in the valuation of improvements upon lands is not warranted by law, and the exclusion of "labor costs" from the value of such improvements when no such exclusion of "labor costs" is made in the valuation of improvements upon railroad property is erroneous, there being no authority of law for such discrimination.

3. In 1920 the valuation of lands and improvements as returned to the state board of equalization and assessment by the county boards averaged more than 68 per cent of the actual value. The state board adopted 68 per cent as a basis for equalization purposes and reduced the valuation accordingly. The valuation of lands and improvements for 1921 and 1922 as returned to the board was much reduced

from the value fixed by the assessment of 1920, which valuation is based, as stated by the board, upon investigations made in 1919 and 1920 "previous to the land boom, and does not cover the period of the highest prices." In 1923 the total reduction from the 1920 valuation was $357,196,797. *Held*, that, under the evidence, the assessment of land in 1923 still remained at about the same percentage of its actual value as in the reduced assessment of 1920.

4. *Held*, further, that, based upon the evidence in the record, the valuation made by the board in 1923 of the property of the complainant railroad was made "at its full actual value," or more.

5. To assess one class of property at 68 per cent to 75 per cent of its actual cash value, and to value the property of another taxpayer at 100 per cent of its actual cash value, constitutes an unlawful discrimination, which is prohibited by the constitution and statutes of the state.

6. While there may be other elements or factors upon which to determine the value of that portion of the line of an interstate railway within this state than those in evidence before the state board of equalization and produced in these proceedings, this court in reviewing the action of such board can only determine the value from the facts in evidence before the board, and those of which it is entitled to take judicial notice.

7. Since there is no evidence that the portion of the line of the complainant railroad extending into other states is of more or less value than the portion of the line in this state, and there is nothing in the record to indicate that this method of allocation is unfair or unjust, the value of the portion in this state may be determined upon a mileage basis, in the proportion that the number of miles in this state bears to the mileage of the whole system.

8. There are no settled or infallible rules for the ascertainment of the actual value of railroad property for the purpose of taxation. Approximation to actual value is all that can reasonably be expected. If the value fixed by the state board bears a similar proportion to the actual value that the valuation of other property does, such a valuation for assessment purposes is valid.

9. Where a collateral attack is made upon the validity of a tax or of an assessment, by injunction, mandamus, or like proceedings, those attacking its validity must show that the valuation was fraudulently made or that there was an intentional discrimination made between classes of property or taxpayers. But where the proceedings of such a board are reviewed in the supreme court upon error proceedings in the same case, the order of the board, like the judgment of a court in a law case, may be set aside if it is manifestly wrong, and the proceedings remanded to the assessing body for the correction of the error made.

Heard before Morrissey, C. J., Letton, Dean, Day and Good, JJ., Shepherd, district judge.

LETTON, J.:

This is a proceeding in error under Section 5901, Comp. St. 1922, to review the assessment for taxation made by the state board of equalization and assessment of that part of its property and franchises required by law to be assessed by that body. The complainant alleged in its petition for a hearing before the state board that all property in the state other than railroad property has been valued for assessment purposes by the county authorities at not to exceed 50 per cent of its actual value; that the law provides that the property of complainant be also valued on the same basis as used for the valuation of all other classes of property; that if the tentative assessed valuation of its property be not

reduced to the same percentage of actual value as other property, or unless all other property be valued and assessed by increasing the value to the percentage at which the complainant's property has been assessed, complainant would be denied the equal protection of the law, and its property would be taken for public use without just compensation and without due process of law. It alleges that the tentative assessment of $10,694,409, made on June 15, 1923, is in excess of the actual value of the complainant's property, which does not exceed $5,186,920, and that this valuation should be further equalized with the assessment of other property in the state. The complainant requested that the board either reduce the valuation of its property to the same percentage of actual value as other property, or that it increase the valuation of all classes of property in each county to the same percentage at which the complainant's property has been assessed. Other railroad companies filed similar complaints. A hearing was had and at its conclusion the board adhered to the tentative valuation.

The testimony on behalf of the railroad companies was in substance as follows: That an investigation was made for them of the sales prices of land in 72 counties for the year ending April 1, 1923. The instructions to the examiners were to omit all transactions that appeared to be the closing up of a farm sale or transfer, and conveyances between parties who were members of the same family, or for natural love and affection, or consideration of love and one dollar. No judicial sales or sales under process were included. The investigation covered 3,227 deeds, the number of acres sold was 648,475, and the total consideration shown by the deeds was $42,411,493. The assessed valuation of the same land in 1922 was $23,730,780. The average sale price per acre was $65.40, and the average assessed valuation per acre on the same land was $36.59, being 56.9 per cent of the sales value. It was not shown which of the sales were for cash or upon

terms. There was no assessment of real estate required under the statute in 1923. The 1922 assessment remains except for improvements placed upon the land within the tax year of 1922-1923. Investigation was also made with regard to mortgaged lands. The valuation placed upon the property by the owners, the appraisement made by the loan companies and the assessed valuation were compared. In these counties the owners' valuation was $60,854,436; the appraisement made by the loan companies was $49,004,938, and the assessed valuation for 1922 was $24,905,799. The assessed value was 40.9 per cent of the owners' valuation, and 50.8 per cent of the loan companies' appraisement. There was also introduced a large number of affidavits of different landowners in the respective counties, all substantially to the effect that in each county the affiant had personally investigated the lands transferred in said county from April 1, 1922, to March 31, 1923, so as to acquaint himself with the actual sale price, location and market value of the land. A list of transfers is attached, and the affiants swear that, in their opinions arrived at from actual observation and from information obtained from grantees of some of these transfers, the market value on March 31, 1923, was on the average 100 per cent of that shown by the deeds.

Exhibit 11 was received in evidence. This exhibit contains the evidence and proceedings had before the state board in 1922, the year in which the present assessment of real estate was made. By this it is shown that, as the result of its own investigation in 1919 and 1920, the board of equalization and assessment found and determined, as to real property, for the year 1920, that "the valuations as returned by the county boards averaged 68 per cent of the real valuation as determined by the ratio process." This ratio of 68 per cent of the actual value of real estate was adopted by the board as the basis for equalization purposes. Before this meeting

of the board, at its request, a tentative plan of equalization between the counties of lands and improvements had been prepared by the secretary of the state board of equalization and the secretary of the department of finance. Part of this report is as follows: "Before the assessment period began, a list of the transfers of lands in the different counties, *from July 1, 1918, to July 1, 1919*, was secured from the proper county officials. The list as sent in gave the number of transfers, the description of the land, number of acres, consideration, and 1919 assessed value of the same acres. When these lists were received, they were carefully checked over and transfers which plainly showed they were not *bona fide* sales were not used in compiling the average sale value for the county." The following statement was made and published by the board:

"In the matter of equalization between counties, the state board has adhered to the early announced plan of accepting for valuation purposes the average value placed on lands and improvements by the precinct and county assessing officials. For equalization between counties, the value returned by the assessing officials of each county has been compared with the average real value, as established by the ratio process, based on *bona fide* sales from July 1, 1918, to July 1, 1919. The equalization of the counties on the basis of the sale average was requested of the board at the meeting of the assessing officials of the counties held July 20, 1920. The ratio process, used in correcting the sale averages, is the plan used by Wisconsin for a number of years, and Minnesota and other states have adopted the same plan.

"Under this plan of equalization, the state board has the combined judgment, as to value, of the assessing officials of the counties and of the buyers and sellers of real estate for a year's period. *The year taken was previous to the land boom and does not cover the period of the highest prices.*

"The valuations as returned by the county boards *averaged 68% of the real value,* as determined by the ratio process, and the *state board adopted this 68%* as the basis for equalization purposes. * * *

"That the board has adhered very closely to the above plan is shown by the fact that the average real value, as determined by the ratio process, for the state was $94.33, and the average value for assessment purposes $64.98, or 68%.

"Under this plan, the board has accepted and adopted the average valuation of the local assessing officials. In making this equalization the state board has decreased the total value of lands and improvements of the state $91,317,444, or $18,263,549 assessed value." In 1920 land was assessed at one-fifth of its actual value.

The law was changed in 1921 so that all real property was required to be assessed in 1921 and 1922, and every second year after 1922, "which assessment shall be used as a basis of valuation for taxation until the biennial assessment." Laws 1921, Ch. 125, approved March 11, 1921. This act was no doubt passed because it was believed that there had been a decline in the value of farm lands and that the former assessment was not a proper measure of the actual value of the land in 1921. In 1921, following the passage of this act, the board issued a statement to the county assessors, a part of which is as follows: "The unexpected passage of this emergency law makes it impossible for this department to follow up with any figures to assist you and you will have to rely on last year's figures, together with your knowledge of your local county, and, in addition to this, follow instructions from this department and the law governing your duties." Instructions were also sent out by the state tax commissioner to county assessors to "value any improvements that may have been added to or removed from any parcel

of land or lot where such improvement is of the value of $100 or more," and that in "arriving at the value for added improvements it would seem to be equitable to *exclude from the value of such improvements the labor costs* of such improvements." It is to be presumed that the assessors followed the instructions of the tax commissioner, the secretary of the state board, and did not assess the labor costs of the improvements made during the years following these instructions.

The effect of this action of the board and of these instructions is shown by the report of the state auditor for 1922. The total assessed valuation of land and improvements for 1920 was $446,328,959, reduced to $428,894,670 by the board. This was upon a valuation of 20 per cent of the actual value. The actual value was therefore considered to be $2,144,473,350, while the assessed valuation for 1921, based on actual value, was $1,831,048,878, a reduction of $313,424,472 from the previous assessment, although this included the value of added improvements, less "labor costs." In 1922 there was again a reduction of $77,736,568, making a total reduction of $391,161,040, exclusive, presumably, of the "labor costs." The exclusion of these must have made a large added reduction. Why labor costs, which are ordinarily considered to be about one-third of the cost of building above the cost of material when the material is on the ground, should be excluded from the value of the improvements to lands, and no such exclusion of labor costs be made in the valuation of improvements made upon railroad property, is unexplained. The board made no change in the returns, so it is to be presumed that about one-third of the value of improvements upon lands was omitted from the valuation. These instructions show an intent to discriminate between these respective classes of property, which was erroneous, and, since never withdrawn, they must be considered in fixing a relative equality of valuation.

The assessment of 1920, as equalized, adopted 68 per cent of the actual value of farm lands and improvements as the basis of valuation. The state board on July 25, 1921, passed a resolution fixing the railroad valuation at the same as that fixed by the board in May, 1920, reciting, "considering the fact that land and improvements outside of the railroad right of way, in 1920, was increased approximately 62 per cent over that of the prior year, and it having been assumed by the board at the time of fixing the valuation of the railroads in May of 1920 that the general average increase obtained in the state would not exceed 40 per cent, and for a further reason that the land constituting the right of way of the railroad companies is, to the minds of the board, a better grade of land than the general average in the state, and is improved to the extent that it is graded for the accomodation of the rolling stock of the companies, and to which no consideration has heretofore been given, and from the fact that the average reduction over 1920, per acre, as returned by the assessing authorities is approximately 15.51 per cent, that by allowing the railroads to be and remain as fixed by the state board heretofore in May, 1920, will result in a fair and an equal valuation as compared to farm lands generally in the state." We have not been able to ascertain on what, if any, evidence this finding was made.

In 1922 the assessing resolution adopted merely expressed in general terms that the board, having taken into consideration all the facts required to be supplied by the railroad companies, from all the information which they were able to obtain, "do hereby ascertain, appraise, fix and assess for the purpose of general taxation the *full actual value* of the property of each of the several systems or companies in the state of Nebraska as hereinafter recited," fixing the value of the property of complainant at $10,694,326. There is in evidence a formula which was used by the state board in 1922

in determining the value of the property of appellant in this state, which is as follows:

"ROCK ISLAND.

Net earnings in Nebraska.....	$ 118,480.83 deficit
Assessment	11,502,985.00
6% of which is.....	690,179.10
This added to deficit gives.....	808,659.93
This deducted from $11,502,985 gives....	10,694,326.00

Or assessment for 1922."

The exhibit was received without objection, but neither complainant nor counsel for the state board have been able to explain why this manner of assessment was adopted.

On June 15, 1923, the following resolution was adopted by the board:

"Whereas, the various railroad companies operating in Nebraska have requested of this board a reduction in the valuation of their property for assessment purposes this year, and whereas, it is not possible under the statute to revalue farm property and other real estate until next year, and whereas, the records disclose that the percentage of increase in the assessed valuation of farms, homes and other forms of real estate has been out of proportion to that of other property, and that the percentage of the taxes paid by the railroads is not in excess of their proportionate share of the total taxes paid by all classes of property, be it therefore resolved, that the application for a reduction in the valuation of railroad property be denied."

The board also resolved that it "do hereby ascertain, appraise, fix and assess for the purpose of general taxation the *full actual value* of the property of each of the several systems or companies in the state of Nebraska as hereinafter

recited: Chicago, Rock Island & Pacific Railway Co., 245.51 miles of track; total actual value $10,694,409." At the hearing on the complaint it was stated by the secretary of the board that this resolution was based upon a table prepared by him. This table is in evidence as Exhibit No. 9. It compares the assessed valuation and the actual valuation of farm lands and improvements, town lots and improvements, and railroad property from 1902 to 1922, inclusive. The statement purports to show that the assessed valuation of farm lands from 1902 to 1920, inclusive, increased 377.62 per cent, while the increase in the value of railroad property was only 136.4 per cent. One of the tax experts of the complainant testified that he had made an analysis of the figures in Exhibit No. 9. He called attention to the fact that 1902—the year in which the secretary takes the actual value as five times the assessed value, and from which he draws the conclusion that from 1902 to 1922, the increase in value of farm lands and improvements was 377.62 per cent—land was only assessed at about one-tenth of its value, instead of one-fifth. The new statute requiring one-fifth of the value to be taken was not in force until September, 1903. So that in this respect the percentage of increase submitted to the board and adopted by it as a basis of comparison with the increase in the value of railroad property as assessed by the state board is fallacious. He further testifies that the increase in railroad mileage between 1902 and 1922 was 526.98 miles, or 9.3 per cent, while the increase in acreage of farm lands between 1902 and 1922 was 41.4 per cent, and that the average assessed value of improved land in Nebraska for 1902 was $3.71 per acre as shown by the report of the state auditor for that year, page 159.

A number of affidavits from taxpayers in many counties of the state are in the record, substantially to the effect that the assessed valuation in 1922 was 100 per cent of the real

value of the land, and that lands have decreased in value since that time.

Objection was made by the state that the railroad companies did not at the time when the assessment of real estate was made, that is, 1922, object to these assessments. But the record shows that complaint was made in 1922, and that statistics were produced showing a disproportion between the sales value and the assessed valuation of lands, but that the 1922 assessment was made as hereinbefore set forth. From a consideration of all the evidence, and in consideration of the reduction from the assessed valuation of land and improvements made in 1920, which assessment was made, as the board recites, "before the boom period of land sales," and which was only 68 per cent of the actual market value of the lands, and the later omission of labor costs in the valuation of improvements, we are convinced that the percentage of assessed valuation of lands and improvements to actual value remains about as it was in 1920.

We must now consider upon what basis the assessed valuation of the property of the complainant was made, and whether, as the board recites in its resolutions of 1921 and 1922, it is based upon the actual value of the property. The law requires that all property be assessed "at its actual value" which is defined to be "its value in the market in the ordinary course of trade." Comp. St. 1922, Sec. 5820. If, however, as between two classes of taxpayers, the property of each is assessed at a lower value but at the same proportion of its actual value, there is no ground for complaint on the part of either. But if the property of one is valued at its actual value and that of another at only 68 per cent of its actual value, inequality results and an unjust and unlawful exaction is made. *State* v. *Osborne*, 60 Neb. 415. At the time the tentative assessment of June 15 was made the state board had before it the report of the complainant required to be made

by the statute. Comp. St. 1922, Sec. 5841. This report, with supplementary information, shows the entire mileage of the system to be 7,635.13. It is conceded by the state that the total mileage of track operated by the complainant in this state is 250.41, of which it owns 241.51 miles. The report shows that there is $129,556,489 of paid-up capital stock, that its actual market value is $78,411,431.76, and the total amount of obligations, including notes given for equipment, is $262,411,305.98. In addition to this, the report contains the number of acres of right of way, an enumeration of property subject to be locally assessed, situated outside the right of way, and also an account of the equipment used in the state. We are unable to determine upon what basis the tentative assessment was made by the board. At the later hearing upon the complaint, the complainant introduced Exhibits Nos. 1 to 5, inclusive, estimating the value of the entire line on five different bases—the par value of stocks and bonds, market value of stock and bonds, the value of the line as represented by the net railway operating income capitalized at 7 per cent, the value as represented by the annual rental paid by the government capitalized at 7 per cent, and the property investment as determined by *ex parte* 74 of the interstate commerce commission. These values range from 199 millions in gross figures to 375 millions, which represents the par value of the stocks and bonds and equipment notes.

A number of decisions have been cited as to what elements should govern in the valuation of railroad property. There seems to be some conflict as to the proper rule to be adopted, especially with regard to valuation for rate making purposes. We believe that, in reviewing the action of the board, we must consider only those elements of value, the existence of which rests upon the facts in evidence. We may not act upon mere conjecture or theory, which, though the theory may be sound, can only be apprehended by an explanation made by some witness conversant with the intricacies of

railroad accounting. No such explanation was made. The following methods of valuation are presented by the record. They do not possess all the elements or factors generally required by the courts, but they are all that were before the state board, and, since we are merely reviewing their action, we cannot consider any others.

The market value of the corporate stock of the railroad company, together with the value of its bonds and of its outstanding obligations for the purpose of equipment, represents in a sense the market value of the entire property, although other elements should enter into the valuation, since the value of stocks and bonds fluctuates frequently from extraneous causes. The report to the state board shows that the market value of the stock is $78,411,431.76; that the total amount of the funded debt and outstanding equipment notes is $262,411,305.98, making the total indebtedness and the market value of the stock $340,822,737.74. Again, the net railway operating income for 1922 is in evidence. The value of the property may in one sense be considered to be the amount of capital investment which will produce that amount of income at the rate of 5¾ per cent per annum, which is considered by the interstate commerce commission to be a fair rate of return on such an investment, or at 6 per cent which we consider to be a fair rate. It was stipulated in open court by the parties that the net income from the operation of the railroad for 1922, after payment of taxes, equipment rents, track rents, and operating expenses, was $13,934,468.51. Assuming that a net income of 6 per cent per annum is a fair return upon the capital invested, we may consider as one estimate of the value $232,241,141.83.

There is a discrepancy between the original report to the board and Exhibit No. 2 introduced at the hearing, with respect to the market value of the stocks and the amount of the funded indebtedness and equipment notes. In the origi-

nal report this is placed at $340,822,737.74, while in Exhibit No. 2 it is placed at $286,981,456. The par value of the stocks and securities of the entire system is $375,529,812. The evidence shows that $10,463,501 of the stock was not paid up, leaving the total par value of the paid-up stock and the outstanding obligations $365,066,311. A statement made to the interstate commerce commission as of October 1, 1919, shown in Exhibit No. 5, places the entire property value at $343,802,202. Averaging all of these figures, we are satisfied that the value of the entire system is not less than about 314 million dollars. None of these outstanding obligations include claims for damages, wages, interest, and other liabilities which are payable out of income and which do not represent investments in property.

There are other elements of value which, under the decisions, should or might be considered, but we are confined to the proofs which were actually before the board. The rule in *Smythe* v. *Ames*, 169 U. S. 466, 547, stated by Mr. Justice Harlan, is as follows:

"The original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property."

In *State* v. *Savage*, 65 Neb. 714, 757, the question how the value of railroad property shall be assessed is considered, and it is said by Judge Holcomb:

"While conceding that the market value of the stocks and bonds of a railroad corporation may not always furnish the best evidence, or the exclusive criterion of the value of the corporate property, it cannot, we think, be gainsaid that the amount and value of such stocks and bonds, if not subject to extraneous influences, would very generally, if not uniformly, be a most important factor in the determination of the value of the corporate property which they represent, and should receive due consideration, with other pertinent evidence, in reaching a correct conclusion as to the actual value of such property."

In *State Railroad Tax Cases*, 92 U. S. 575, 605, it is said by Mr. Justice Miller:

"It is therefore obvious that, when you have ascertained the current cash value of the whole funded debt, and the current cash value of the entire number of shares, you have, by the action of those who above all others can best estimate it, ascertained the true value of the road, all its property, its capital stock, and its franchises; for these are all represented by the value of its bonded debt and of the shares of its capital stock."

The next important question is how much of this value should be allocated to the property of the complainant in Nebraska. The report shows that the main track mileage operated in this state is 250.41. There being no evidence to show any difference in the relative value of the mileage in this state as compared with that in other states, it is not improper under this state of the record to distribute the value upon a mileage basis. In *Wallace* v. *Hines*, 253 U. S. 66, and *Davis* v. *Wallace*, 257 U. S. 478, in which an excise tax, which was apportioned on the ratio which the mileage within the state of North Dakota bore to the entire mileage of the system, and in which the bill of complaint alleged that on

account of the differences of value of the line in the region through which the road passed in North Dakota, from its value in the more densely populated portion of the country in which its valuable terminals lay, the value of the mileage in North Dakota was very much less than the value of the mileage in other states, the Supreme Court of the United States held that, under these facts, the ratio which the mileage in North Dakota bore to the entire mileage was not a fair method of determining the value of that part of the system lying in North Dakota.

The evidence upon which the state board of equalization acted in this case shows no such disparity in value or difference in conditions between the mileage of the Rock Island road in Nebraska and in other states. So far as appears there is nothing unjust or unfair in ascertaining the value of the property of the railroad in Nebraska by comparison of the amount of mileage of main track in this state with the amount of mileage of main track operated in its entire system. The rule is as stated in *Fargo* v. *Hart,* 193 U. S. 490: "A state cannot tax the privilege of carrying on commerce among the states. Neither can it tax property outside of its jurisdiction belonging to persons domiciled elsewhere. On the other hand, it can tax property permanently within its jurisdiction although belonging to persons domiciled elsewhere and used in commerce among the states. And when that property is part of a system and has its actual uses only in connection with other parts of the system, that fact may be considered by the state in taxing, even though the other parts of the system are outside of the state. The sleepers and rails of a railroad, or the posts and wires of a telegraph company, are worth more than the prepared wood and the bars of steel or coils of wire, from their organic connection with other rails or wires and the rest of the apparatus of a working whole. This being clear, it is held reasonable and constitutional to get at the worth of such a line, in the

absence of anything more special, by a mileage proportion. The tax is a tax on property, not on the privilege of doing the business, but it is intended to reach the intangible value due to what we have called the organic relation of the property in the state to the whole system." See *Cleveland, C. C. & St. L. R. Co.* v. *Backus*, 154 U. S. 439; *Illinois C. R. Co.* v. *Greene*, 244 U. S. 555.

On the basis of the value of 314 million dollars for the entire system, the value per mile of the operated main trackage is $40,951. The operated mileage in Nebraska is 250.41, which, upon a mileage allocation, makes the total value of the property of the complainant in Nebraska $10,254,539. The property outside of the right of way locally assessed, which is not assessable by the state board, amounts to $70,273, leaving the value of the assessable property in this state, on this basis, $10,184,266. Some of the lines operated by complainant are owned by subsidiary companies of which it owns all or a large part of the stock, some are leased lines, and upon some of the operated property it has merely trackage rights. However, value inheres in both the trackage rights and in the leases. The value of the whole property must be considered. The statements of value contained in this opinion are only approximate, and not intended to limit or control the state board if or when it becomes necessary to assess or reassess the value of a complainant's line of railroad in Nebraska. The board is entitled to ascertain all the facts which are necessary upon which to base its judgment as to value, and it is the duty of the railroad company whose property is to be assessed to make a full fair and complete statement of all relevant facts, and to assist the board to make a fair valuation. The subject of the valuation of railroads is a different one. Neither railroad commissioners, nor taxing authorities, nor courts have as yet arrived at settled or infallible rules or criteria for the ascertainment of actual value

of such property. Approximation is all that can reasonably be expected.

The Constitution, Section 1, Art. VIII, requires that "taxes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises." It is impossible to secure absolute uniformity in the valuation of property for taxation, more especially where it belongs to different classes. The most that any assessing officer or board can do in this direction is to make a valuation in such a reasonable manner, having regard to all the circumstances, as to show that the intention was not to create disparity but to secure uniformity. And if, after indulging the presumption that the assessing authorities have been endeavoring to perform their difficult and arduous duties in good faith and with impartiality, the differences and discrepancies are not so great or so obvious as to indicate that there has been a substantial error to the prejudice of the complainant, the assessment will not be disturbed. *State* v. *Savage*, 65 Neb. 714. On the other hand, if it is shown by the evidence that the property of one person, individual or corporation, has been assessed out of a reasonable and fair uniformity with that of other property and that the disparity is so great that it violates the requirement of the constitution, then a reviewing court may and should remand the proceedings to the assessing board for correction in order to make the percentage of assessed valuation to actual valuation of all classes and kinds of property as nearly as possible the same. *Sioux City & P. R. Co.* v. *Washington County*, 3 Neb. 30; *McGee* v. *State*, 32 Neb. 149; *State* v. *State Board*, 81 Neb. 139; 2 Elliott, Railroads (3d Ed.) 280, 281, 282. As to error from such tribunals, see *Mathews* v. *Hedlund*, 82 Neb. 825; *Munk* v. *Frink*, 75 Neb. 172.

The valuation for the year 1923 of lands and improvements, as shown by the records of the tax commissioner, is $33,964,244 greater than the valuation for 1922. The total reduc-

tion from the assessed value of such property in 1920 (which valuation, as the board has stated, was made before the great increase in land values) is $357,196,797 a reduction of about 16 per cent from a valuation made on a basis of 68 per cent of actual value. From a careful consideration of all the facts in evidence, we are of the opinion that the valuation of the property of complainant lacks reasonable uniformity with the assessment of lands and improvements; that, as the record recites, the railroad property has been assessed at "full actual value," and that the other class mentioned has been assessed at a much lower percentage. This being the case, the property of complainant should be revalued as nearly as possible at the same percentage of actual value as all other property.

Having come to this conclusion, the finding and order of the state board of equalization and assessment of the value of complainant's property is set aside and the proceedings are remanded to that body for further proceeding in accordance with law. While Section 5882, Comp. St. 1922, seems to apply specifically to where "any tax or part thereof levied under the provisions of this article shall be adjudged illegal and nonenforceable, or shall be set aside by any court of competent jurisdiction on any ground whatever," and specifies what the duty of the board shall be as to reassessing and redetermining the value in such case, the procedure prescribed for such cases seems to be well adapted to such a case as this, where the assessment of the property of the complainant has been decided to lack uniformity with that of other classes of property. We desire in this connection to call special attention to Section 5842, Comp. St. 1922, which gives the board power to consider all facts and information not contained in the reports made by the railroad companies. Where such information is considered, the source from which it has been obtained should, so far as possible, be mentioned in the record, so that a reviewing court may

consult the same sources and thus stand in the shoes of the assessing body.

REVERSED AND REMANDED.

THE STATE OF NEBRASKA, ss.

I, H. C. Lindsay, Clerk of the Supreme Court of the State of Nebraska, do hereby certify that I have compared the foregoing copy of an opinion filed by said Court on the 31st day of December, 1923, with the original on file in my office and that the same is a correct transcript thereof, and of the whole of said original.

In Testimony Whereof, I have hereunto set my hand and caused to be affixed the Seal of said Court, at the City of Lincoln, this 16th day of January, 1924.

(Seal) H. C. LINDSAY,
Clerk.

Statutes, Section 1070: "Terms of the Supreme Court shall be held at the capitol, beginning on the first Monday in January and third Monday in September of each year."

Rule 1 of the Supreme Court of Nebraska: "1. *Sittings of the Court.*—The regular public sessions of this court will be held on the first and third Mondays of each month at 9 o'clock a. m., standard time, during each term."

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY *v.* OSBORNE, AS TAX COMMISSIONER OF THE STATE OF NEBRASKA, ET AL.

CHICAGO & NORTHWESTERN RAILWAY COMPANY *v.* OSBORNE, AS STATE TAX COMMISSIONER OF THE STATE OF NEBRASKA, ET AL.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY *v.* OSBORNE, AS STATE TAX COMMISSIONER OF THE STATE OF NEBRASKA, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

Nos. 219, 224, 225. Argued April 14, 15, 1924.—Decided April 28, 1924.

Where railroad companies, complaining of systematic and intentional discrimination by a state board in the assessment of taxes, were allowed no remedy by the state law other than a writ of error from the State Supreme Court to correct only errors of law apparent on the face of the record prepared by the board itself, with no supersedeas pending review to prevent infliction of penalties on their agents for failure to pay the tax, *held*, that the remedy was not adequate and that the case was cognizable by the District Court in suits for injunction. P. 15.

Reversed.

APPEALS from decrees of the District Court which dismissed the suits brought by the appellant companies to restrain collection of state taxes, upon the ground that their remedy at law was adequate.

Mr. Bruce Scott, with whom *Mr. Timothy Byron Clark, Mr. Jesse L. Root, Mr. J. W. Weingarten* and *Mr. J. C. James* were on the briefs, for appellant in No. 219.

Mr. Wymer Dressler, with whom *Mr. R. L. Kennedy, Mr. R. N. Van Doren, Mr. James B. Shecan* and *Mr. F. W. Sargent* were on the briefs, for appellants in Nos. 224 and 225.

Mr. Geo. W. Ayres and *Mr. Hugh La Master,* Assistant Attorneys General of the State of Nebraska, with whom *Mr. O. S. Spillman,* Attorney General, was on the briefs, for appellees.

MR. JUSTICE HOLMES delivered the opinion of the Court.

These are bills in equity brought to restrain the collection of taxes upon the respective railroad companies for the year 1922 on the ground that the farm lands in Nebraska were systematically and intentionally undervalued while the railroad properties were valued at their full worth and more. After a hearing by three Judges sitting under § 266 of the Judicial Code, it was held that the plaintiffs "had an adequate remedy at law under the statutes of the State of Nebraska in prosecuting error proceedings to the Supreme Court of the State of Nebraska" and for that reason a preliminary injunction was denied. Appeals were taken and the correctness of the above ruling is the only question here. It is not disputed that the proceedings in the Supreme Court of the State are purely judicial, so that *Prentis* v. *Atlantic Coast Line Co.,* 211 U. S. 210, does not apply to this case. *Bacon* v. *Rutland R. R. Co.,* 232 U. S. 134. *Prendergast* v. *New York Telephone Co.,* 262 U. S. 43, 48.

The Board of Equalization and Assessment equalizes the assessments of other property made in the Counties

and itself determines the assessments upon railroads. When it has made its final order it certifies it to the counties and the county treasurers thereupon issue distress warrants and notify agents of delinquent corporations to pay over all moneys of the corporation in their hands not exceeding the amount of the tax. A failure of the agent to do so is made a misdemeanor and is punished by a fine. There is no provision for a supersedeas pending proceedings before the Supreme Court, and none by which the plaintiffs can pay under protest and bring an action at law. *Dawson* v. *Kentucky Distilleries & Warehouse Co.*, 255 U. S. 288, 296, 297. Yet if the Board is guilty of the conduct charged in the bill, the only remedy given by the statute is a writ of error to take to the Supreme Court a record prepared by the Board. Compiled Stats. 1922, § 5901.

If an action to recover the payment were allowed, the suit might be brought in the Courts of the United States, under the usual conditions, as well as in those of the State. *Singer Sewing Machine Co.* v. *Benedict*, 229 U. S. 481, 486. But the writ of error of course can be sued out only in the State, and a remedy in the State Courts only has been held not to be enough. *Smyth* v. *Ames*, 169 U. S. 466, 516. *St. Louis-San Francisco Ry. Co.* v. *McElvain*, 253 Fed. 123, 136. *Franklin* v. *Nevada-California Power Co.*, 264 Fed. 643, 645. That however is not the only objection. On a writ of error the Court is confined to the record. The most that it could do, it would seem, would be, if errors appeared on the face of the record, to set aside an excessive valuation and remit the matter to the same Board to try again, which is hardly satisfactory, if the Board is seeking to evade the law. *United States* v. *Osage County*, 251 U. S. 128, 133, 134. When such a charge as the present is made it can be tried fully and fairly only by a Court that can hear any and all competent evidence, and that is not bound by findings of

the implicated board for which there is any evidence, always easily produced. We are of opinion that there is jurisdiction in equity over the case stated by the bill and that therefore the Judges "should dispose of the application for a temporary injunction on the merits and otherwise proceed with the suit in regular course." *Union Pacific R. R. Co.* v. *Weld County*, 247 U. S. 282, 287.

Decrees reversed.